

# APPELLATE PROCEDURE GUIDE



December 2021

Clerk's Office  
United States Court of Appeals for the Fourth Circuit  
1100 East Main Street, Suite 501  
Richmond, Virginia 23219-3517  
(804) 916-2700

BASED UPON THE FEDERAL RULES OF APPELLATE PROCEDURE AND  
THE LOCAL RULES OF THE FOURTH CIRCUIT. CONSULT THE RULES FOR  
COMPLETE INFORMATION ON APPELLATE PROCEDURE.

## **ATTORNEY ADMISSION & EFILING REGISTRATION**

### **Admission Required**

Only attorneys admitted to the bar of this court may practice before the court. The court does not admit attorneys pro hac vice.

An attorney may be named on a brief filed in this court without being admitted to the bar of the Fourth Circuit, provided that at least one lawyer admitted to practice in this court also appears on the brief. Any other document submitted by an attorney who is not a member of the bar of the Fourth Circuit will be accepted for filing conditioned on his or her qualifying for membership within a reasonable time. Loc. R. 46(b).

### **Eligibility Requirements**

An attorney is eligible for admission “if that attorney is of good moral and professional character and admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).” Fed. R. App. P. 46(a).

### **Application for Admission**

To apply for admission, complete the [application for admission](#), including signing the oath before a public notary and having a bar member sign the motion for admission. The application can be mailed to the clerk with the requisite fee, made payable to the court of appeals clerk. The application can also be submitted [online](#) with payment by credit card after the attorney seeking admission to the court has successfully registered for a Fourth Circuit Pacer account.

The fee is waived for attorneys appointed by the court to represent a party in forma pauperis, counsel for the United States and any agency thereof who has a case pending before this court, and law clerks to the judges of the court and to the district judges, magistrate judges, and bankruptcy judges within this circuit. Loc. R. 46(b).

### **eFiling Registration**

Attorneys who wish to file documents with the court must register for a Pacer account. See [Register for eFiling](#). If counsel is already a member of the court's bar, the account will be activated with full filing privileges. If counsel is not a member of the court's bar, their account will be activated to allow for submission of their bar application. Once their bar application is processed, filing privileges will be activated.

Users must have an upgraded PACER account before they can file documents with the Fourth Circuit. The same PACER account may be used at all federal courts that have implemented Next Gen CM/ECF, but each court must separately approve and register counsel's filing privileges. All filers must now have their own PACER account. Law firms and other organizations can set up a [PACER Administrative Account \(PAA\)](#) to manage their user accounts and have central billing for PACER access fees. See [Upgrade](#)

[PACER Account Instructions](#) for additional information. The PACER Service Center notifies the Fourth Circuit that counsel has registered for filing privileges.

#### **Related Links**

- [Application for Admission to the Bar](#)
- [Check Bar and ECF Status](#)
- [Register for eFiling](#)
- [Submit Bar Application](#)
- [Rule 46, Attorneys \(with Local Rules\)](#)

## **FILING AND SERVICE**

### **Electronic Filing and Service by Counsel**

The Fourth Circuit adopted mandatory electronic filing by counsel for all cases effective June 1, 2008. Therefore, counsel must register for electronic filing and file and serve documents through the court's CM/ECF system. Counsel unable to file electronically may request exemption for good cause shown in a particular case. Counsel appointed in the district court who wish to withdraw from CJA representation on appeal may file a motion to withdraw in paper form instead of registering for electronic filing for the sole purpose of withdrawing from the case. Electronic filing is complete at the time and date stated in the notice of docket activity.

CM/ECF automatically serves case participants who have registered with the court for electronic service; participants who do not receive electronic service through CM/ECF must be served by counsel as otherwise authorized by Fed. R. App. P. 25(c). A service preference report is available from the CM/ECF reports menu that identifies which participants counsel must serve outside CM/ECF. In addition, the notice of docket activity received upon completion of filing identifies the participants who must be served conventionally. Sealed documents, case initiating documents (e.g., petitions for review, petitions for mandamus), and manual filings (not available in electronic form) are not served through CM/ECF and must be served by counsel as otherwise authorized by Fed. R. App. P. 25(c).

### **Paper Filing and Service by Pro Se Litigants**

Pro se litigants are not required to file documents electronically. If they wish to use electronic filing in their pending case, they may do so after completing the electronic filing registration requirements. Pro se documents filed in paper form should be addressed to: Patricia S. Connor, Clerk, United States Court of Appeals for the Fourth Circuit, 1100 E. Main Street, Suite 501, Richmond, Virginia, 23219-3517.

Filing is not timely unless the clerk **receives** the papers within the time fixed for filing. Fed. R. App. P. 25(a). However, a paper filed by an inmate is timely if evidence, such as a postmark, date-stamp, or sworn inmate declaration of date of deposit with prepaid postage, shows that the paper was deposited in the institution's internal mailing system on or before the last day for filing. Briefs are timely filed if placed in first-class mail or dispatched to a third-party courier within the time fixed for filing.

Litigants who file documents in paper form, outside CM/ECF, must also serve those documents outside CM/ECF. In accordance with Fed. R. App. P. 25(c), service outside CM/ECF may be by (i) personal delivery, (ii) mail, or (iii) third-party commercial carrier for delivery within three days, or (iv) by email outside CM/ECF with the written consent of the person served.

### **Certificates of Service**

For registered users filing through CM/ECF, a certificate of service is not required if all service was through CM/ECF. If any service was accomplished outside CM/ECF, a certificate of service is required certifying the date and manner of service and the names and addresses of persons served outside CM/ECF. For sealed documents, a certificate of service is included on the Certificate of Confidentiality form for this purpose.

Parties not filing through CM/ECF must file a certificate of service with their document certifying the date and manner of service and the names and addresses of persons served outside CM/ECF. Service on a party represented by counsel must be on all counsel of record, except as provided by rule or order. Fed. R. App. P. 25(b).

If service was by fax or e-mail, the certificate must provide the fax number or e-mail address of the person served. Fed. R. App. P. 25(d). When a brief or appendix is filed by mailing or dispatch, the certificate of service must also state the date and manner by which the document was mailed or dispatched to the clerk. Fed. R. App. P. 25(d)(3).

### Computation of Time

In computing any time period stated in days or a longer unit of time, “(A) exclude the day of the event that triggers the period; (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.” Fed. R. App. P. 26(a)(1).

In computing a time period stated in hours, “(A) begin counting immediately on the occurrence of the event that triggers the period; (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and (C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.” Fed. R. App. P. 26(a)(2).

### Deadlines Running from Service of a Document

Whenever a party is required or permitted to act within a prescribed period after service of a paper upon that party, three days are added to this prescribed period unless the paper is delivered on the date of service stated in the proof of service. Fed. R. App. P. 26(c). A paper that is served electronically **is treated as delivered on the date of service**; thus, three days are not added to deadlines running from electronic service of a document. Fed. R. App. P. 26(c) (effective Dec. 1, 2016).

### Specific Documents (chart)

Type of Document	How to File
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Case initiating documents-- petitions for permission to appeal, petitions for review, applications for enforcement, petitions for mandamus or prohibition, motions to authorize successive habeas petitions	Case initiating documents can be submitted to the court in any of the following ways: (1) upload electronically through CM/ECF utility to submit new case; or (2) mail to Clerk's Office, 1100 E. Main St., Suite 501, Richmond, VA 23219. Additional copies are not required for filing, but documents must be served conventionally.
Notice of appeal	File electronically in district court.
Initial forms -- appearance of counsel, disclosure statement, docketing statement, transcript order form	File electronically in court of appeals.  Send copy of transcript order to court reporter and district court and attach copy to docketing statement filed in the court of appeals. In CJA cases, submit all transcript authorization requests through the district court's eVoucher system.
Motions, responses, replies	File electronically in court of appeals. Exhibits should be filed as part of the <b>Motion</b> or <b>Response/answer</b> event, clearly identified by letter or number.
Formal briefs	File electronically in court of appeals using <b>BRIEF</b> event; also file 1 paper copy.  The court's paper copy must be filed with the court or delivered to the post or courier the next business day. Service of paper copies on opposing counsel is not required.  If the case is tentatively calendared for oral argument, all filers are required to file 3 additional paper copies.  A paper copy of an amicus brief filed at the petition for rehearing stage is <b>not</b> required.
Sealed version of formal briefs	File electronically in court of appeals using <b>SEALED BRIEF</b> event; also file 1 paper copy and file a <b>certificate of confidentiality</b> .  The court's paper copy must be filed with the court or delivered to the post or courier the next business day. Sealed documents must be served outside CM/ECF.  If the case is tentatively calendared for oral argument, all filers are required to file 3 additional paper copies.
Joint Appendix Supplemental Appendix	File electronically in court of appeals using <b>JOINT APPENDIX</b> or <b>SUPPLEMENTAL APPENDIX</b> event. File 1 paper copy.  The court's paper copy must be filed with the court or delivered to the post or courier the next business day. Service of paper copies on

	<p>opposing counsel is not required.</p> <p>If the case is tentatively calendared for oral argument, all filers are required to file 3 additional paper copies.</p>
<p>Sealed joint appendix</p> <p>Sealed supplemental appendix</p>	<p>File electronically in court of appeals using <b>SEALED JOINT APPENDIX</b> or <b>SEALED SUPPLEMENTAL APPENDIX</b> entry; also file 1 paper copy and a certificate of confidentiality.</p> <p>The court's paper copies must be filed with the court or delivered to the post or courier the next business day. Paper copies must also be served on opposing counsel.</p> <p>If the case is tentatively calendared for oral argument, all filers are required to file 3 additional paper copies, with additional copies being ordered by the court if otherwise needed.</p>
Certificate of confidentiality or motion to seal	<p>File electronically in court of appeals using entry <b>Certificate of Confidentiality</b> or <b>MOTION/Seal</b>; also file 1 paper copy with paper copy of sealed brief or appendix.</p>
Informal briefs	<p>File electronically in court of appeals and serve pro se litigants outside CM/ECF. Most pro se litigants are not registered as filing users and therefore must be served conventionally.</p>
Notices regarding availability for argument	File electronically in court of appeals
Acknowledgments of oral argument notification	File electronically in court of appeals
Supplemental authorities, status reports, memoranda, correspondence	File electronically in court of appeals
Petitions for rehearing and rehearing en banc	File electronically in court of appeals
Bills of cost and objections to bills of cost	File electronically in court of appeals
CJA and other financial vouchers	File CJA vouchers electronically in CJA eVoucher; file other vouchers in paper form.

## Related Links

- [Rule 25, Filing and Service \(with Local Rules\)](#)
- [Rule 26, Computing and Extending Time \(with local Rule\)](#)
- [Case Information & eFiling](#)
- [Declaration of Inmate Filing](#)
- [CJA eVoucher](#)

## APPELLATE DEADLINES

Rev. 02/08/2021

Calculation of Deadlines	
<p><b>Fed. R. App. P. 26(a) Computing Time:</b> When computing deadlines, exclude the day of the event that triggers the period; count every day including Saturdays, Sundays, and legal holidays; and include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Fed. R. App. P. 26(a).</p> <p><b>Fed. R. App. P. 26(c) Additional Time After Service:</b> When a party may or must act within a specified time after service, 3 days are added after the period would otherwise expire under Rule 26(a), unless the paper is delivered on the date of service stated in the proof of service. Effective December 1, 2016, a paper that is served electronically is treated as delivered on the date of service; therefore 3 days are not added to the period allowed.</p>	
Initial Documents	
Notice of appeal from district court	<p><b>FRAP 4:</b> For civil cases, notice must be filed in district court within 30 days after entry of judgment (60 days if federal government a party), or within 14 days after filing of a timely notice of appeal by any other party. For criminal cases, defendant's notice must be filed in district court within 14 days after entry of judgment or within 14 days after filing of a timely appeal by the government; the government's notice of appeal must be filed within 30 days after entry of judgment or within 30 days after filing of a timely appeal by the defendant. See the rule for extensions based on post-judgment filings.</p>
Notice of appeal from tax court	<p><b>FRAP 13:</b> Notice of appeal must be filed in tax court within 90 days after entry of tax court's decision or within 120 days after tax court's decision if any other party has filed a timely notice of appeal.</p>
Petition for review of agency order	<p><b>FRAP 15:</b> Petition for review of agency order must be filed in the court of appeals within the time prescribed by law.</p>
Answer to application for enforcement of agency order	<p><b>FRAP 15:</b> An answer to an application for enforcement of an agency order must be served within 21 days after filing of the application.</p>
Petition for permission to appeal from district court	<p><b>28 USC § 1292(b):</b> A petition for permission to appeal an order certified by the district court to involve a controlling question of law as to which there is substantial ground for difference of opinion and as to which immediate appeal would materially advance the termination of the litigation must be filed in the court of appeals within 10 days after entry of the order.</p> <p><b>28 USC § 1453(c):</b> A petition for permission to appeal an order remanding a class action to the state court from which it was removed must be filed within 10 days after entry of the order.</p> <p><b>Fed R Civ P 23(f):</b> A petition for permission to appeal an order granting or denying class-action certification must be filed within 14 days after entry of the order.</p> <p><b>FRAP 5:</b> The petition must not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A <a href="#">certificate of compliance</a> with type-volume limit is required if produced by computer.</p>



Petition for permission to appeal from bankruptcy court	<p><b>28 USC § 158(d)(2):</b> Any request by a party that the bankruptcy court or district court certify a bankruptcy court order for direct appeal to the court of appeals on the basis that the order involves a question of law as to which there is no controlling decision, that involves a matter of public importance, that requires resolution of conflicting decisions, or as to which an immediate appeal would materially advance the progress of the case must be filed within 60 days after entry of the order.</p> <p><b>Bankr R 8002 &amp; 8006:</b> For timely filing of a petition for permission to appeal, a notice of appeal must be filed in the bankruptcy court within 14 days of entry of the order under Bankr R 8002, <b>and</b> a petition for permission to appeal must be filed in the court of appeals within 30 days of the date the order is certified for direct appeal to the court of appeals under Bank R 8006.</p> <p><b>FRAP 5:</b> The petition must not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A <a href="#">certificate of compliance</a> with type-volume limit is required if produced by computer.</p>
Answer or cross-petition for permission to appeal	<p><b>FRAP 5:</b> A party may file an answer in opposition or a cross-petition within 10 days after service of the petition. The answer or cross-petition must not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A <a href="#">certificate of compliance</a> with type-volume limit is required if produced by computer.</p>
Petition for writ of mandamus	<p><b>FRAP 21:</b> The rules do not prescribe a time period for filing a petition for writ of mandamus or prohibition, but state that the petition may not exceed 7,800 words (30 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A <a href="#">certificate of compliance</a> with type-volume limit is required if produced by computer.</p>
Answer to petition for writ of mandamus	<p><b>FRAP 21:</b> The court may deny the petition without answer or order the respondent to answer within a fixed time. The rules do not establish a time period, but the court generally uses a 10-day period. The answer may not exceed 7,800 words (30 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A <a href="#">certificate of compliance</a> with type-volume limit is required if produced by computer.</p>
<a href="#">Application to proceed in forma pauperis</a>	<p><b>FRAP 24:</b> If leave to proceed in forma pauperis has not been granted by the district court, an application to proceed in forma pauperis on appeal must be filed in the court of appeals within the 15-day period set by the court's fee notice or within the subsequent 15-day period set by the court's Local Rule 45 notice.</p>
<a href="#">Appearance of counsel</a>	<p><b>Loc R 46(c):</b> Each attorney of record must file an appearance of counsel within 14 days after docketing of the appeal or after being retained or appointed.</p>
<a href="#">Disclosure of corporate affiliations</a>	<p><b>Loc R 26.1:</b> A party in a civil, agency, bankruptcy, or mandamus case, other than the United States or a party proceeding in forma pauperis, must file a disclosure statement, except that a state or local government is not required to file a disclosure statement in a case in which the opposing party is proceeding without counsel. A corporate party in a criminal or post-conviction case, and a corporate amicus curiae, must also file a disclosure statement. The disclosure statement must be filed within 14 days after docketing of the appeal unless earlier pleadings are filed for the court's consideration, in which case the disclosure statement must be filed at that time. The disclosure statement must also be included in the party's principal brief.</p>

Docketing statement (civil/agency)	<b>Loc R 3(b):</b> Counsel filing a notice of appeal, petition for review, or application for enforcement must file a docketing statement within 14 days after docketing of the appeal. If an opposing party wishes to object to the docketing statement, such objection must be filed within 10 days after service of the docketing statement.
Docketing statement (criminal)	
Transcript order form	<b>FRAP 10(b):</b> Appellant must order any necessary transcript within 14 days of filing the appeal. The transcript order form must be transmitted to the court reporter and the district court, and attached to the docketing statement filed in the court of appeals. CJA counsel must also submit an AUTH-24 in the district court's eVoucher system within 14 days. If appellee believes additional portions of the transcript are needed, appellee must file and serve on appellant a designation of additional parts to be ordered within 14 days after service of the transcript order form. Unless appellant orders the additional parts within 14 days after service of the designation, the appellee may, within the following 14 days, either order the parts or move in the district court for an order requiring the appellant to do so.
Notice of constitutional challenge to state or federal statute in case in which state or federal government is not a party	<b>FRAP 44:</b> If a party questions the constitutionality of a federal law in a case in which the federal government is not a party, or the constitutionality of a state law in a case in which the state government is not a party, the questioning party must give written notice to the court upon filing of the record or as soon as the question is raised so that the clerk can certify that fact to the attorney general.
Administrative record	<b>FRAP 17:</b> The agency must file the administrative record within 40 days after filing of the briefing order in an agency case.

## Motions

Motion	<p><b>FRAP 27:</b> Application for an order or other relief is made by a motion, the length of which may not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A <a href="#">certificate of compliance</a> with type-volume limit is required if produced by computer. In cases in which all parties are represented by counsel, the motion must state that the other parties have been informed of the intended filing of the motion and indicate whether the other parties consent or intend to file responses in opposition. Loc R 27(a). With the following exceptions, the rules do not establish deadlines for the filing of motions.</p> <p><b>FRAP 16(d):</b> A motion to intervene in an agency review proceeding must be filed within 30 days of filing of the petition for review.</p> <p><b>Loc R 31(c):</b> A motion for extension of time to file a brief must be filed well in advance of the brief due date.</p> <p><b>Loc R 27(b):</b> Any party adversely affected by an order of the clerk may file a motion to reconsider the clerk's action within 14 days after entry of the order.</p> <p><b>Loc R 27(f):</b> A motion for summary disposition should be made only after briefs are filed. If submitted before completion of the briefing schedule, the court will defer action on the motion until the case is mature for full consideration. Motions to dismiss based upon the ground that the appeal is not within the jurisdiction of the Court or on other procedural grounds should be filed within the time allowed for the filing of the response brief. The Court may also sua sponte summarily dispose of any appeal at any time.</p> <p><b>Loc R 30(a):</b> A motion for sanctions for unnecessary appendix designations must be filed within 14 days after entry of judgment, and will be considered only if counsel objected to the designation of unnecessary material in writing to opposing counsel within 14 days of the designation.</p>
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	<p><b>Loc R 32(b):</b> A motion to exceed the length limitations for briefs must be filed at least 10 days prior to the due date of the brief and must be supported by a statement of reasons. These motions are disfavored and will be granted only for exceptional reasons.</p> <p><b>Loc R 34(c):</b> Any motion that would affect the argument date of a case must be filed within the 10-day period established by the notice that a case has been tentatively assigned to a particular argument session.</p> <p><b>Loc R 34(d):</b> A motion for additional argument time must be filed well in advance of the hearing date and set forth the position of opposing counsel.</p> <p><b>Loc R 34(e):</b> Any motion to submit on the briefs must be filed as soon as possible upon completion of the briefing schedule or within 10 days of tentative notification of argument, whichever is earlier.</p> <p><b>FRAP 41:</b> Any motion to stay the mandate must be filed prior to issuance of the mandate. The mandate issues 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for rehearing or rehearing en banc, or a motion for stay of mandate.</p>
Response to motion	<p><b>FRAP 27:</b> A response to a motion must be filed within 10 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner. Responses must not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A <a href="#">certificate of compliance</a> with type-volume limit is required if produced by computer.</p>
Reply in support of motion	<p><b>FRAP 27:</b> Any reply to a response must be filed within 7 days after service of the response. The court will not ordinarily await the filing of a reply before reviewing a motion and response. If movant intends to file a reply and does not want the court to actively consider the motion and response until a reply is filed, the movant should notify the clerk in writing of the intended filing of the reply and request that the court not act until the reply is received. Replies must not exceed 2,600 words (10 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A <a href="#">certificate of compliance</a> with type-volume limit is required if produced by computer.</p>
<b>Briefing &amp; Calendaring</b>	
Joint Appendix	<p><b>FRAP 30:</b> Unless deferred under FRAP 30(c), appellant must file the joint appendix at the time of filing the opening brief. The appendix must comply with the <a href="#">Fourth Circuit Brief &amp; Appendix Requirements</a>. In court-appointed cases, the appendix cannot exceed 250 double-sided sheets without advance permission of the court.</p>
Opening brief	<p><b>FRAP 31:</b> In civil cases, appellant's opening brief must be filed within 40 days after filing of the briefing order.</p> <p><b>Loc R 31(a):</b> In criminal cases, appellant's opening brief must be filed within 35 days after filing of the briefing order.</p> <p><b>FRAP 32(a)</b> (eff. 12/01/2016): The opening brief may not exceed 13,000 words, must be accompanied by a <a href="#">certificate of compliance</a> with type-volume limit if in excess of 30 pages, and must satisfy the <a href="#">Fourth Circuit Brief &amp; Appendix Requirements</a>.</p>

Response brief	<p><b>FRAP 31:</b> In civil cases, appellee's response brief must be filed within 30 days after service of appellant's opening brief.</p> <p><b>Loc R 31(a):</b> In criminal cases, appellee's response brief must be filed within 21 days after service of appellant's opening brief.</p> <p><b>FRAP 32(a)</b> (eff. 12/01/2016): The response brief may not exceed 13,000 words, must be accompanied by a <a href="#">certificate of compliance</a> with type-volume limit if in excess of 30 pages, and must satisfy the <a href="#">Fourth Circuit Brief &amp; Appendix Requirements</a>.</p>
Opening/response brief for cross-appeal	<p><b>FRAP 28.1:</b> In civil cross-appeals, appellee's opening/response brief must be filed within 30 days after service of appellant's opening brief.</p> <p><b>Loc R 31(a):</b> In criminal cross-appeals, appellee's opening/response brief must be filed within 21 days after service of appellant's opening brief.</p> <p><b>FRAP 28.1</b> (eff. 12/01/2016): The opening/response brief may not exceed 15,300 words, must be accompanied by a <a href="#">certificate of compliance</a> with type-volume limit if in excess of 35 pages, and must satisfy the <a href="#">Fourth Circuit Brief &amp; Appendix Requirements</a>.</p>
Response/reply brief for cross-appeal	<p><b>FRAP 28.1:</b> In civil cross-appeals, appellant's response/reply brief must be filed within 30 days after service of appellee's opening/response brief.</p> <p><b>Loc R 31(a):</b> In criminal cross-appeals, appellant's response/reply brief must be filed within 21 days after service of appellee's opening/response brief.</p> <p><b>FRAP 28.1:</b> The response/reply brief may not exceed 13,000 words, must be accompanied by a <a href="#">certificate of compliance</a> with type-volume limit if in excess of 30 pages, and must satisfy the <a href="#">Fourth Circuit Brief &amp; Appendix Requirements</a>.</p>
Reply brief	<p><b>FRAP 31</b> (eff. 12/01/2018): In civil cases, the reply brief must be filed within 21 days after service of the response brief or the response/reply brief.</p> <p><b>Loc R 31(a):</b> In criminal cases, the reply brief must be filed within 10 days after service of the response brief or the response/reply brief.</p> <p><b>FRAP 32(a):</b> The reply brief may not exceed 6,500 words, must be accompanied by a <a href="#">certificate of compliance</a> with type-volume limit if in excess of 15 pages, and must satisfy the <a href="#">Fourth Circuit Brief &amp; Appendix Requirements</a>.</p>
Intervenor's brief	<p><b>FRAP 16(d):</b> A person wishing to intervene in an agency review proceeding must file a motion for leave to intervene within 30 days after the petition for review is filed.</p> <p><b>Loc R 28(d):</b> All parties to a side, including intervenors, are required to join in a consolidated brief unless the court grants leave to file a separate brief.</p>
Amicus brief at the merits stage	<p><b>FRAP 29(a):</b> An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus that does not support either party must file its brief no later than 7 days after the appellant's opening brief is filed. The court may grant leave for later filing, specifying the time within which the opposing party may answer.</p> <p>An amicus brief at the merits stage may not exceed half the length of the party's principal brief, must be accompanied by a <a href="#">certificate of compliance</a> with type-volume limit and must satisfy the <a href="#">Fourth Circuit Brief &amp; Appendix Requirements</a>.</p>
Anders pro se brief	<p><b><u>Anders v. California</u>, 388 U.S. 738 (1967):</b> If appellate counsel is convinced, after obtaining and reviewing the entire record in a criminal appeal, that the appeal is frivolous, an Anders brief is filed, raising anything in the record that could possibly support an appeal. A copy of counsel's brief is served on the defendant with a letter advising the defendant that the court will afford him time to raise any issues he may wish to pursue. The court then notifies the defendant that he has 30 days to file his pro se brief under Anders.</p>

Informal opening brief	<b>Loc R 34(b):</b> In pro se cases, the court sets an informal briefing schedule that requires the filing of appellant's informal opening brief within 21 days of service of the briefing order. The court sets a preliminary informal briefing schedule in all non-capital cases in which a certificate of appealability is needed under FRAP 22(b). The preliminary informal briefing schedule requires the filing of an informal opening brief within 21 days of service of the briefing order for the court to use in considering whether to grant a certificate of appealability. No deadline is set for a response brief unless a certificate of appealability is granted.
Informal response brief	<b>Loc R 34(b):</b> In pro se cases, appellee may (but is not required to) file an informal response brief within 14 days after service of the informal opening brief.
Informal reply brief	<b>Loc R 34(b):</b> In pro se cases, appellant may file an informal reply brief within 10 days after service of the informal response brief.
Notice of conflict with proposed argument dates	<b>Loc R 34(c):</b> Counsel must notify the clerk of any conflict with proposed argument dates within the 10-day period established by the notice that a case has been tentatively assigned to a particular argument session.
Oral argument acknowledgment	Counsel must return the oral argument acknowledgment form identifying who will present argument within the 10-day period established by the oral argument notification.
<b>Post-Decision</b>	
Petition for rehearing and/or rehearing en banc	<p><b>FRAP 40:</b> A petition for rehearing must be filed within 14 days after entry of judgment, but in a civil case in which the United States or its agency or officer is a party, any party may file a petition for rehearing within 45 days after entry of judgment. A petition for rehearing must not exceed 3,900 words (15 pages if handwritten or typewritten). A <a href="#">certificate of compliance</a> with type-volume limit is required if produced by computer.</p> <p><b>Loc R 40(c):</b> The court strictly enforces the time limits for filing petitions for rehearing. The only grounds for extension are the death or serious illness of counsel, a pro se party, or a family member of counsel or a pro se party; or an extraordinary circumstance wholly beyond the control of counsel or a pro se party.</p> <p><b>Loc R 35(a):</b> A petition for rehearing en banc must be made at the same time and in the same document as a petition for rehearing.</p> <p><b>FRAP 35(b):</b> A combined petition for rehearing and rehearing en banc may not exceed 3,900 words (15 pages if handwritten or typewritten). A <a href="#">certificate of compliance</a> with type-volume limit is required if produced by computer.</p>
Response to petition for rehearing and/or rehearing en banc	<p><b>FRAP 40:</b> Unless the court requests, no response to a petition for panel rehearing is permitted. If a response is requested, the court generally allows 10 days.</p> <p><b>FRAP 35:</b> Unless the court orders, no response may be filed to a petition for rehearing en banc. If a response is ordered, the court generally allows 10 days. A response to a petition for rehearing and/or rehearing en banc may not exceed 3,900 words (15 pages if handwritten or typewritten). A certificate of compliance with type-volume limit is required if produced by computer.</p>

Amicus brief at the petition for rehearing stage	<p><b>FRAP 29(b):</b> An amicus curiae supporting a petition for rehearing or supporting neither party must file its amicus brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.</p> <p>An amicus brief at the petition for rehearing stage may not exceed 2,600 words, must be accompanied by a <a href="#">certificate of compliance</a> with type-volume limit and must satisfy the <a href="#">Fourth Circuit Brief &amp; Appendix Requirements</a>.</p> <p><b>Loc R 29(b)(2):</b> A paper copy of the amicus brief is not required at the petition for rehearing stage.</p>
<a href="#">Bill of costs</a>	<b>FRAP 39:</b> A prevailing party who wants costs taxed must file a bill of costs within 14 days after entry of judgment.
Objection to bill of costs	<b>FRAP 39:</b> Objections to a bill of costs must be filed within 14 days after service of the bill of costs.
<a href="#">CJA eVoucher</a> <a href="#">Assigned counsel voucher</a>	<a href="#">CJA Implementation Plan:</a> Appointed or assigned counsel's compensation voucher is due within 60 days of entry of judgment, denial of a petition for rehearing, or the filing of a petition for writ of certiorari, whichever is later.
<a href="#">Certiorari status form</a>	<b>Loc R 46(d):</b> To ensure compliance with the requirement that counsel receiving a written request that a certiorari petition be filed in a criminal case either file a petition for certiorari or move to withdraw on the basis that a certiorari petition would be frivolous, the court requires counsel to file a certiorari status form within 60 days after entry of judgment.
Petition for writ of certiorari	<b>IOP 41.2:</b> A petition for writ of certiorari must be filed with the Supreme Court within 90 days after entry of judgment. The time runs from issuance of the court's decision or from denial of a timely petition for rehearing or rehearing en banc, not from issuance of the mandate.



## **SEALED & CONFIDENTIAL MATERIALS**

### **Internet Availability of Docket & Documents**

Fourth Circuit case dockets and documents are available on the Internet via the Judiciary's PACER system (Public Access to Court Electronic Records). The Fourth Circuit docket is available on the Internet even if the district court docket was sealed. If a party's name was sealed in the district court, it should be replaced by "Under Seal" or a pseudonym on appeal.

Due to the electronic availability of court documents, the federal rules prohibit including certain personal data identifiers in court filings. In addition, parties should not include any data in their filings that they would not want on the Internet. Counsel should advise their clients on this subject so that an informed decision can be made. Responsibility rests with counsel and the parties, not with the clerk.

Documents filed by the parties in immigration and social security cases are not accessible over the Internet to the public. In immigration and social security cases, public Internet access is limited to the court's docket, orders, and opinions.

### **Federal Rules of Procedure**

The federal rules of procedure require filers to redact any of the following personal data identifiers (PDIs) if included in court filings: (1) social security and tax ID numbers must be limited to last four digits; (2) minor children must be identified by their initials only; (3) dates of birth must show the year only; (4) financial account numbers must be limited to the last four digits only; and (5) home addresses in criminal cases must be limited to city and state only. The federal rules establish limited exceptions to these redaction requirements. See Fed. R. App. P. 25(a)(5); Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1; Fed. R. Bankr. P. 9037.

### **Judicial Conference Privacy Policy**

In addition, the judiciary's [Privacy Policy for Electronic Case Files](#) prohibits filers from including any of the following criminal documents in the public file: (1) unexecuted summonses or warrants; (2) bail or presentence reports; (3) statement of reasons in judgment of conviction; (4) juvenile records; (5) identifying information about jurors or potential jurors; (6) CJA financial affidavits; (7) ex parte requests to authorize CJA services and (8) any sealed documents, such as motions for downward departure for substantial assistance, plea agreements indicating cooperation, or victim statements. Any reference to substantial assistance or cooperation with the government in criminal proceedings should be sealed in the parties' briefs.

### **Local Rule 25(c)**

Local Rule 25(c) limits the sealing of documents by requiring that sealed record material be separated from unsealed material and placed in a sealed volume of the appendix and by requiring the filing of both sealed, highlighted versions and public, redacted versions of briefs and other documents.

Since the ECF events for sealed filings make the documents accessible only to the court, counsel must serve sealed documents on the other parties in paper form.

### **Sealed Volume of Appendix/Supplemental Appendix**

If sealed record material needs to be included in the appendix, it must be placed in a **separate, sealed volume** of the appendix and filed with a certificate of confidentiality. In consolidated criminal cases in which presentence reports are being filed for multiple defendants, each presentence report must be placed in a separate, sealed volume served only on Government counsel and counsel for the defendant who is the subject of the report.

- Use ECF event-**SEALED JOINT APPENDIX (court access)** and **SEALED SUPPLEMENTAL APPENDIX (court access)** to file sealed electronic appendix volume(s). Cover of sealed appendix volume must be marked SEALED, and paper copies must be placed in envelopes marked SEALED. Sealed volume must be served on other parties outside ECF.
- Use ECF event-**Certificate of confidentiality** to identify authority for treating material as sealed and to identify who may have access to sealed material. A paper copy of the certificate of confidentiality must accompany the paper copy of the sealed appendix filed with the court.
- Use ECF event-**JOINT APPENDIX** and **SUPPLEMENTAL APPENDIX** to file public electronic appendix volumes(s).

### **Sealed Version of Brief**

If sealed material needs to be referenced in a brief, counsel must file both a **sealed, highlighted version** of the brief and a **public, redacted version** of the brief, as well as a certificate of confidentiality.

- Use ECF event-**SEALED BRIEF (court access)(formal briefs under seal)** to file sealed electronic version of brief in which sealed material has been highlighted. Cover of sealed brief must be marked SEALED, and paper copies must be placed in envelopes marked SEALED. Sealed version must be served on other parties outside ECF.
- Use ECF event-**Certificate of confidentiality** to identify authority for treating material as sealed and to identify who may have access to sealed material. A paper copy of the certificate of confidentiality must accompany the paper copy of the sealed brief filed with the court.
- Use ECF event-**BRIEF (formal briefs not under seal)** to file public electronic version of brief from which sealed material has been redacted.

### **Sealed Version of Motions and Other Documents**

If sealed material needs to be referenced in a motion or other document, counsel must file both a **sealed, highlighted version** and a **public, redacted version**, as well as a certificate of confidentiality.



- Use ECF event-**SEALED DOCUMENT** to file sealed electronic version of document in which sealed material has been highlighted. First page of document must be marked SEALED. Sealed version must be served on other parties outside ECF.
- Use ECF event-**Certificate of confidentiality** to identify authority for treating material as sealed and to identify who may have access to sealed material.
- Use the appropriate ECF event (e.g., **MOTION** or **RESPONSE/ANSWER**) to file public electronic version of document from which sealed material has been redacted.

## Motions to Seal

A certificate of confidentiality may be used to request sealing of information protected by the Privacy Policy for Electronic Case Files, or by statute, rule, regulation, or order. To request sealing of other materials, or to request sealing of an entire brief or motion due to inability to create a public, redacted version, counsel must file a motion to seal.

The motion to seal must appear on the public docket for five days. The motion must identify the document or portions thereof for which sealing is requested, the reasons why sealing is necessary, the reasons a less drastic alternative will not afford adequate protection, and the period of time for which sealing is required. If it is necessary to reference sealed material in the motion, a **sealed, highlighted version** and a **public, redacted version** of the motion must be filed.

## Highly Sensitive Documents

The court has adopted [Standing Order 21-01](#) implementing procedures adopted by the Federal Judiciary for the filing of highly sensitive sealed documents in paper form, accompanied by a certificate (for material sealed by the district court or other tribunal) or motion (for requests to file material under seal in the first instance).

**Forms:** [Certificate of Confidentiality](#) & [Certificate for Highly Sensitive Document Protection](#)

**Instructions:** [How do I redact items from pleadings?](#) (Marking out text in a word processing document using a highlighter or box tool does not remove sensitive data from the document.)

## NEW APPEALS & PETITIONS

### Final Judgment Rule

In general, appeal may be taken only from a final judgment or order disposing of all claims against all parties, and leaving nothing for the district court to do but execute the judgment. 28 U.S.C. § 1291. The principal exceptions to the requirement of a final judgment are:

- **Collateral Order Doctrine**

Under the collateral order doctrine established in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546 (1949), an order that determines a right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated can be immediately appealed.

- **Rule 54(b) Appeal from Partial Judgment Made Final Under Rule 54(b)**

When more than one claim for relief is presented in an action, the district court may direct the entry of a final judgment as to one or more but fewer than all the claims or parties upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment to permit appeal to be taken from the claims as to which final judgment was entered.

- **Interlocutory Appeals from Injunctive Orders**

Under 28 U.S.C. § 1292(a)(1), interlocutory orders granting, denying or modifying injunctions are appealable.

### Civil Appeals

The timely filing of a notice of appeal in civil cases is mandatory and jurisdictional. Unlike the criminal appeal period, which appears only in the rules of procedure, the civil appeal period is set by statute in 28 U.S.C. § 2107 and is therefore mandatory and jurisdictional. See Bowles v. Russell, 551 U.S. 205 (2007).

- **Appeal Period**

Notice of appeal in a civil case must be filed "within 30 days after the date of entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1). When the United States, its agency, or officer is a party, the time within which any party may file a notice of appeal is increased to 60 days. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice of appeal was filed, or within the time otherwise prescribed for a civil appeal, whichever is later. Fed. R. App. P. 4(a)(3).

- **Entry of Judgment**

A judgment or order is entered for purposes of appeal when the judgment or order is entered in the civil docket under Fed. R. Civ. P. 79(a). In addition, if Fed. R. Civ. P. 58(a) requires a separate document, the judgment or order is not entered for purposes of appeal until it is set forth on a separate document or until 150 days have run from entry of the judgment or order in the civil docket in accordance with Fed. R. Civ. P. 79(a). A separate document is not required for orders disposing of the post-judgment motions listed in Fed. R. Civ. P. 58(a). A failure to set forth a judgment or order on a separate document when required by Fed. R. Civ. P. 58(a) does not affect the validity of an appeal from that judgment or order. Fed. R. App. P. 4(a)(7).

- **Filing Before Entry of Judgment**

A notice of appeal filed after the court announces a decision or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry. Fed. R. App. P. 4(a)(2).

- **Post-Judgment Motions**

A notice of appeal filed prior to, or during the pendency of the following motions does not divest the district court of jurisdiction to rule on the motion. The appeal is valid but does not proceed until after disposition of the timely post-judgment motion. The time for filing the notice of appeal from final judgment does not begin to run until disposition of the post-judgment motion. If appellant wishes to also appeal the district court action on the post-judgment motion, appellant must timely file an amended notice of appeal. Fed. R. App. P. 4(a)(4).

- Motions for judgment under Fed. R. Civ. P. 50(b) filed within 28 days of entry of judgment;
- Motions to amend or make additional findings of fact under Fed. R. Civ. P. 52(b) filed within 28 days of entry of judgment;
- Motions to alter or amend the judgment or to grant a new trial under Fed. R. Civ. P. 59 filed within 28 days of entry of judgment;
- Motions for attorney's fees under Fed. R. Civ. P. 54 filed within 14 days of entry of judgment if a district court extends the time for appeal under Rule 58;
- Motions for relief under Fed. R. Civ. P. 60 if the motion is filed within 28 days of entry of judgment.

- **Extension of Appeal Period**

Upon a showing of excusable neglect or good cause, the district court may extend the time for filing a notice of appeal upon motion filed not later than 30 days after expiration of the appeal period. Fed. R. App. P. 4(a)(5).

- **Reopening of Appeal Period**

In addition, under Fed. R. App. P. 4(a)(6), if the district court finds that a party did not receive notice under Fed. R. Civ. P. 77(d) of the entry of judgment within 21 days after entry and that no party would be prejudiced by reopening the time to appeal, upon motion filed within 180 days after entry of judgment or within 14 days after the moving party receives or observes written notice of entry, whichever is earlier, the district court may reopen the time for appeal for a period of 14 days from entry of the order reopening the time for appeal.

- **Appeal from a Final Decision of the Magistrate Judge**

If the parties consent to the magistrate judge's conduct of all proceedings including entry of judgment in a civil matter, an appeal from the magistrate judge's final judgment is taken in the same manner as an appeal from any other judgment of a district court. 28 U.S.C. § 636(c)(1)-(3); Fed. R. App. P. 3(a)(3).

If the district court designates a magistrate judge to conduct hearings, including evidentiary hearings, and to submit proposed findings of fact and recommendations for disposition, any party may, within 14 days after being served with a copy of the magistrate judge's findings and recommendations, file in the district court objections thereto. 28 U.S.C. § 636(b)(1)(B)-(C). Filing of objections in the district court is essential to preserve review in the court of appeals.

- **Appeal in a Bankruptcy Case**

An appeal to the court of appeals from a final judgment of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal. Fed. R. App. P. 6(a). An appeal to the court of appeals pursuant to 28 U.S.C. § 158(d)(1) from a final judgment of a district court exercising appellate jurisdiction pursuant to 28 U.S.C. § 158(a) is taken as any other civil appeal, although with some variation in procedure, as provided in Fed. R. App. P. 6(b). The Fourth Circuit has not established panels of three bankruptcy judges to hear appeals from bankruptcy courts pursuant to 28 U.S.C. § 158. Internal Operating Procedure 6.1.

## **Criminal Appeals**

Because the criminal appeal period is set only by rule, and not by statute, a timely criminal appeal is a “claims processing” rather than a jurisdictional requirement and can be waived. See United States v. Urutyan, 564 F.3d 679 (4th Cir. 2009).

- **Appeal Period**

The defendant's notice of appeal must be filed within 14 days after entry on the docket of the judgment or order appealed from. Fed. R. App. P. 4(b). When an appeal by the Government is authorized by statute, the Government must file its notice of appeal within 30 days after entry of judgment. A defendant may file a cross appeal within 14 days after the filing of a notice of appeal by the Government. Fed. R. App. P. 4(b). The Government may file a cross appeal within 30 days of filing of a notice of appeal by the defendant.

- **Filing Before Entry of Judgment**

A notice of appeal filed after the court announces a decision or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry. Fed. R. App. P. 4(b)(2).

- **Post-Trial Motions**

If the defendant makes a timely post-trial motion, an appeal from a judgment of conviction must be taken within 14 days after entry of the order disposing of the last such motion outstanding, or within 14 days after entry of the judgment of conviction, whichever is later. Fed. R. App. P. 4(b). A notice of appeal filed after the court announces a sentence but before it disposes of one of these motions is ineffective until the date of entry of the order disposing of the last such motion outstanding, or until the date of entry of the judgment of conviction, whichever is later. A valid notice of appeal is effective without amendment to appeal from an order disposing of any of the motions.

- Motion for judgment of acquittal filed under Fed. R. Crim. P. 29 within 14 days after guilty verdict;
- Motion for arrest of judgment filed under Fed. R. Crim. P. 34 within 14 days after verdict or plea of guilty;
- Motion for a new trial on any ground other than newly discovered evidence filed under Fed. R. Crim. P. 33 within 14 days after guilty verdict;
- Motion for a new trial based on the ground of newly discovered evidence if the motion is made before or within 14 days after entry of judgment.

- **Motion to Correct Sentence**

The filing of a motion to correct a sentence under Fed. R. Crim. P. 35 *does not* toll the time to appeal the judgment of conviction. Fed. R. App. P. 4(b)(5).

- **Extension of Appeal Period**

Upon a finding of excusable neglect, the district court may--before or after the time has expired, with or without motion and notice--extend the time for filing a notice of appeal for a period not to exceed 30 days from expiration of the prescribed time. Fed. R. App. P. 4(b)(4).

## **Content of Notice of Appeal**

The notice of appeal must:

- specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as “all plaintiffs,” “the defendants,” “the plaintiffs A, B, et al.,” or “all defendants except X”;
- designate the judgment, order, or part thereof being appealed; and
- name the court to which the appeal is taken.

A pro se notice of appeal is considered filed on behalf of the signer and the signer’s spouse and minor children (if they are parties), unless the notice clearly indicates otherwise. A pro se notice of appeal must be signed in accordance with Fed. R. Civ. P. 11(a), but the absence of a signature may be remedied by filing a corrected notice of appeal after the appeal period has expired. Becker v. Montgomery, 532 U.S. 757 (2001). In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

## **Jurisdiction of District Court Pending Appeal**

As a general rule, an appeal divests the district court of power to modify its judgment or take other action affecting the cause without permission from the court of appeals, except insofar as a statute or rule expressly reserves the district court’s jurisdiction in aid of appeal. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982). If, however, the appeal is from an interlocutory order, the district court retains jurisdiction to act on matters not involved in the appeal unless an order is entered staying the remainder of the proceedings. See Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 378-79 (1985). The district court also retains jurisdiction to act in aid of the appeal, including acting on the following matters:

- Act on timely post-judgment motions, as provided in Fed. R. App. P. 4(a)(4) & 4(b);
- Correct clerical mistake in civil judgment or order as provided in Fed. R. Civ. P. 60(a) before appeal is docketed in appellate court, and thereafter while appeal is pending with leave of appellate court;

- Deny Fed. R. Civ. P. 60(b) motions filed more than 28 days after judgment; issue an indicative ruling under Fed. R. Civ. P. 62.1 stating that a Rule 60(b) motion filed more than 28 days after judgment raises a substantial issue or would be granted; grant such a motion on a remand from the court of appeals under Fed. R. App. P. 12.1;
- Correct arithmetical, technical, or other clear error in sentence within 14 days of imposition of sentence as provided in Fed. R. Crim. P. 35;
- Act on motions to extend time to appeal pursuant to Fed. R. App. P. 4(a)(5) or 4(b) and to reopen the time to appeal pursuant to Fed. R. App. P. 4(a)(6);
- Act on motions for stay or injunction pending appeal as provided in Fed. R. App. P. 8 and require the filing of an appeal bond under Fed. R. App. P. 7;
- Act on motions for bail pending appeal as provided in Fed. R. App. P. 9(b);
- Act on requests for transcript at government expense under 28 U.S.C. § 753(f) and under the Criminal Justice Act;
- Rule on appellee's request to require appellant to order transcript under Fed. R. App. P. 10(b)(3);
- Settle the record where no transcript is available under Fed. R. App. P. 10(c) or approve an agreed statement of facts in lieu of the record under Fed. R. App. P. 10(d);
- Act on motions to correct, modify, or supplement the record pursuant to Fed. R. App. P. 10(e) and Local Rule 10(d);
- Issue or deny certificates of appealability in orders denying relief under 28 U.S.C. §2254 and 2255, if no ruling was included in final judgment, as required by Rule 11 of the Rules for § 2254 Cases or § 2255 Cases;
- Tax certain costs on appeal under Fed. R. App. P. 39(e);
- Dismiss appeal on stipulation of parties under Fed. R. App. P. 42(a), if appeal has not yet been docketed in court of appeals.

## **Petitions for Permission to Appeal and Answers to Petition**

- **Controlling Question of Law**

Under 28 U.S.C. § 1292(b), a district judge may certify that an interlocutory order in a civil action involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. Upon application made to the court of appeals within 10 days of entry of the order, the

court of appeals may, in its discretion, permit an appeal to be taken from such order. See Fed. R. App. P. 5; Local Rule 5.

- **Direct Bankruptcy Appeals**

A petition for permission to appeal an order of the bankruptcy court directly to the court of appeals may be filed if a timely notice of appeal was filed in the bankruptcy court (within 14 days of entry of the order as provided in Bankr. R. 8002), and if a motion for certification of the order has been filed within 60 days of entry of the order. The order must be certified by the bankruptcy court (before docketing of the appeal), by the district court (after docketing of the appeal), or by all appellants and appellees:

- to involve a question of law as to which there is no controlling decision of the court of appeals or Supreme Court or that involves a matter of public importance;
- to involve a question of law requiring resolution of conflicting decisions; or
- that an immediate appeal may materially advance the progress of the case.

28 U.S.C. § 158(d)(2). A petition for permission to appeal may be filed in the court of appeals within 30 days after certification of the order. Bankr R. 8006.

- **Class Action Certification Orders**

Under Fed. R. Civ. P. 23(f), a party may apply to the court of appeals for leave to appeal within 14 days of entry of an order granting or denying class action certification, and the court of appeals may, in its discretion, permit an appeal to be taken from such order.

- **Class Action Remand Orders**

Under 28 U.S.C. § 1453(c), a petition for permission to appeal may be filed within 10 days of entry of an order granting or denying a motion to remand a class action to the state court from which it was removed. If the court of appeals grants permission to appeal under FRAP 5, the appeal under § 1453(c) must be decided within 60 days of the order granting permission to appeal. See Citifinancial v. Lightner, No. 07-200 (4th Cir. Aug. 2, 2007).

- **Content and Format**

The petition must include the facts necessary to understand the question presented; the question itself; the relief sought; the reasons why the appeal should be allowed and is authorized. Copies of the opinion and order authorizing an interlocutory appeal and a disclosure statement must be attached. The petition must not exceed 5,200 words (20 pages if handwritten or



typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. Fed. R. App. P. 5(b) & (c).

- **Answer or Cross-Petition**

A party may file an answer in opposition or a cross-petition within 10 days after service of a petition for permission to appeal. The answer or cross-petition must not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. Fed. R. App. P. 5(b) & (c).

## **Mandamus Petitions and Answers**

Under 28 U.S.C. § 1651, the Supreme Court and all courts established by Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. Petitions for writs of mandamus, prohibition, and other extraordinary relief are governed by Fed. R. App. P. 21.

- **Content and Format**

The petition must state the relief sought, the issues presented, the facts necessary to understand the issues presented, and the reasons why the writ should issue. Any parts of the record necessary to understand the matters set forth and a corporate disclosure statement must be attached. The petition must not exceed 7,800 words (30 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. Fed. R. App. P. 21(d).

- **Answers to Mandamus Petitions**

The court may deny the petition without an answer. Otherwise, it must order the respondent to answer within a fixed time. The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals. Fed. R. App. P. 21(b).

The answer must not exceed 7,800 words (30 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. Fed. R. App. P. 21(d).

- **Crime Victims' Rights Act**

Under the Crime Victims' Rights Act, the district court must permit a victim to be heard at any public proceeding involving release, plea, sentencing, or parole of a criminal defendant. If this right is denied, the victim or the government may file a mandamus petition in the court of appeals, which the court of appeals must decide within 72 hours of filing. To facilitate the court of appeals' resolution of the petition within the 72-hour deadline, the petitioner is required to provide the clerk's office with advance notice of the filing of the petition, identify the petition as one asserting crime victims' rights pursuant to 18 U.S.C. § 3771(d)(3), and arrange for immediate service of the petition on the relevant parties. Local Rule 21(d).

### **Motions for Authorization to File Successive Post-Conviction Applications**

A second petition under 28 U.S.C. § 2254 or 2255 will not be considered by the district court unless the petitioner has obtained authorization from the court of appeals to file a successive application. A motion for authorization to file a successive application may be filed in the court of appeals at any time; however, a one-year limitations period applies to the filing of all §§ 2254 and 2255 motions in the district court. The court of appeals must decide motions for authorization within 30 days of filing. If the court of appeals requires a response to the motion for authorization to file a successive application, it will request a response within no more than 7 days of the date requested. Local Rule 22(d).

### **Petitions for Review**

Review of final agency action is obtained by filing a petition for review with the court of appeals within the time specified by statute. Fed. R. App. P. 15(a). The petition must name each party seeking review either in the caption or in the body of the petition. Use of such terms as "petitioners" or "et al." is not effective to name the parties to a petition for review. The petition must also name the agency as respondent and specify the order to be reviewed. Fed. R. App. P. 15(a). A copy of the order to be reviewed and a list of the respondents to be served and their addresses must also be attached. Local Rule 15(b).

- **Benefits Review Board**

Review of a final decision of the Benefits Review Board is sought by filing a petition for review in the court of appeals within 60 days following issuance of the Board's order. 33 U.S.C. § 921(c).

- **Board of Immigration Appeals**

Review of a final removal order is sought by filing a petition for review within 30 days of issuance of the order. 8 U.S.C. § 1252.

## **Applications for Enforcement and Answers**

- **National Labor Relations Board**

There is no time limit on filing an application for enforcement of or a petition for review from an order of the National Labor Relations Board. 29 U.S.C. § 160.

- **Answer to Application for Enforcement**

Within 21 days after an application for enforcement is filed, the respondent must file an answer to the application. If the respondent fails to answer in time, the court will enter judgment for the relief requested upon the filing of an application for default judgment.

## **Tax Court Appeals**

Review of a decision of the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered. If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later. If sent by mail the notice is considered filed on the postmark date. Fed. R. App. P. 13.

## **Related Links**

- [Court Forms & Fees – Notice of Appeal & Petition for Review](#)
- [Rule 3. Appeal as of Right - How Taken \(with Local Rules\)](#)
- [Rule 4. Appeal as of Right - When Taken](#)
- [Rule 5. Appeal by Permission \(with Local Rule\)](#)
- [Rule 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel \(with IOP\)](#)
- [Rule 13. Review of a Decision of the Tax Court](#)
- [Rule 15. Review or Enforcement of an Agency Order – How Obtained; Intervention \(with Local Rules\)](#)
- [Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs \(with Local Rule\)](#)

## **APPEAL FEES AND INDIGENT STATUS**

### **Fee Payments**

Notices of appeal filed in the district court should be accompanied by a \$505 fee paid to the Clerk, U.S. District Court. Fed. R. App. P. 3(e). Petitions for review and mandamus filed in the court of appeals should be accompanied by a \$500 fee paid to the Clerk, U.S. Court of Appeals and may be paid by credit card. Fed. R. App. P. 15(e).

### **Criminal Appeals & Criminal Justice Act Status**

If a party proceeded under the Criminal Justice Act in the district court and that status was never terminated, CJA status continues on appeal and no fee or further application is required. 18 U.S.C. § 3006a; Fourth Circuit Plan in Implementation of the Criminal Justice Act. Otherwise, the appellant is required to pay the district court the required \$505 appeal fee upon filing of the notice of appeal.

If the fee is not paid upon filing of the notice of appeal, the court of appeals notifies appellant when a criminal appeal is docketed that the fee must be paid to the district court or a CJA 23 application must be filed in the court of appeals.

### **Prisoner Civil Appeals & Prison Litigation Reform Act Status**

When a prisoner notes an appeal in a civil case, the court of appeals notifies the prisoner that the appeal fee must be paid in full or the prisoner must consent to payment of the fee in installments under the Prison Litigation Reform Act by filing the required forms with the court of appeals. 28 U.S.C. § 1915(b); Local Rule 24.

These procedures apply to civil appeals filed by persons detained or incarcerated after accusation of or conviction for violations of criminal law, but do not apply to appeals in 28 U.S.C. § 2241, 2254, 2255, or other cases attacking the criminal conviction.

The court of appeals assesses an initial partial filing fee of twenty percent of the greater of the average monthly deposits to the prisoner's account or the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the notice of appeal. After payment of the initial partial fee, the custodian at the prisoner's institution must withhold twenty percent of the preceding month's income credited to the prisoner's account and forward payments from the account to the clerk of the district court each time the amount in the account exceeds \$10 until the \$505 fee is paid in full. 28 U.S.C. § 1915(b)(1); Local Rule 24. Collection of fees in multiple cases is simultaneous, not sequential. Bruce v. Samuels, 136 S. Ct. 627 (2016).

A prisoner will not be allowed to proceed without the full prepayment of the fee in a civil case if, on three or more prior occasions while incarcerated in any facility, the prisoner has brought an action or appeal in federal court that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief could be granted unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g); Local Rule 24.

## **Civil Appeals & In Forma Pauperis Status**

In civil appeals by non-prisoners and in appeals under 28 U.S.C. § 2241, 2254 or 2255, the standard in forma pauperis provisions of 28 U.S.C. § 1915(a) and Fed. R. App. P. 24 apply.

If the appellant proceeded in forma pauperis (or CJA) below and the district court has not withdrawn its finding of indigent status or found that the appeal is not taken in good faith, appellant's in forma pauperis status continues on appeal. 28 U.S.C. § 1915(a); Fed. R. App. P. 24(a). Otherwise, appellant must file an application to proceed in forma pauperis on appeal.

The court of appeals notifies appellant when the appeal is docketed that an application to proceed in forma pauperis must be filed in the court of appeals unless appellant has paid the fee to the district court or been granted leave to proceed in forma pauperis by the district court.

### **Petitions for Permission to Appeal**

No fee is charged for filing a petition for permission to appeal. If permission to appeal is granted, the appellant must pay the \$505 appeal fee to the district court. Fed. R. App. P. 5. For a petition for permission to take a direct appeal from the bankruptcy court, a \$298 fee for is paid to the bankruptcy clerk, when the notice of appeal is filed, and an additional \$207 is paid to the bankruptcy clerk if the court of appeals grants permission to appeal.

### **Petitions for Review of Agency Action**

The petitioner must pay the \$500 fee to the court of appeals when the petition for review is filed. If the fee is not paid upon filing of the petition, the court of appeals notifies the party that the fee must be paid or an application to proceed in forma pauperis must be filed with the court of appeals.

### **Tax Court Appeals**

The appellant must pay the \$500 appeal fee to the U.S. Tax Court upon filing of the notice of appeal. If the fee is not paid upon filing of the notice, the court of appeals notifies the party that the fee must be paid to the tax court or an application to proceed in forma pauperis must be filed with the court of appeals.

### **Petitions for Mandamus, Prohibition & Extraordinary Relief**

The petitioner must pay the \$500 fee to the court of appeals when the petition for mandamus, prohibition, habeas corpus, or other extraordinary relief is filed. If the fee is not paid upon filing of the petition, the court of appeals notifies the petitioner that the fee must be paid or an application to proceed in forma pauperis must be filed with the court of appeals.

### **Prisoner Petitions for Mandamus, Prohibition & Extraordinary Relief**

Prisoners bringing mandamus or other extraordinary writ petitions are required to pay the \$500 fee to the court of appeals when the petition is filed or apply to pay the fee in installments under the Prison Litigation Reform Act, 28 U.S.C. § 1915(b). The PLRA procedures apply to petitions filed by persons detained or incarcerated after accusation of or conviction for violations of criminal law, but do not apply to petitions relating to criminal cases or to 28 U.S.C. § 2241, 2254, or 2255 cases.

### **Motions for Authorization to File Successive Habeas Corpus Applications**

No fee is charged for filing a motion for authorization under 28 U.S.C. § 2244 to file a successive 28 U.S.C. § 2254 or 2255 application.

### **Related Links**

- [Rule 3. Appeal as of Right - How Taken \(with Local Rules\)](#)
- [Rule 24. Proceeding in Forma Pauperis \(with Local Rule\)](#)
- [Court Forms & Fees](#)
- [Fee Schedule](#)
- [Pay Fees by Credit Card](#)

## **APPOINTMENT OF COUNSEL IN CRIMINAL CASES**

### **Duty to Continue Representation**

Under the Fourth Circuit's Plan in Implementation of the Criminal Justice Act, every attorney, including retained counsel, who represented a defendant in the district court must continue to represent the client after termination of those proceedings, unless relieved of further responsibility by the court of appeals. If there is a judgment of conviction or an order revoking probation, counsel must inform the defendant of his right to appeal and his right to have counsel appointed on appeal. If requested by the defendant, counsel must file a timely notice of appeal and take appropriate and timely steps to perfect the appeal. CJA Implementation Plan, Part V.1.

In most direct criminal appeals, counsel who represented the defendant in the district court is automatically appointed upon docketing of the appeal. Upon appointment by this court, counsel must complete the appeal and, if appellant so requests and there are grounds for seeking such review, file a petition for writ of certiorari in the Supreme Court. If counsel believes a petition for writ of certiorari would be frivolous, counsel may file a motion to withdraw in the court of appeals. The motion must reflect that counsel served the defendant with the motion and advised the defendant of his right to file a response within 7 days. CJA Implementation Plan, Part V.2; Local Rule 46(d).

### **Motions to Withdraw**

An attorney who does not desire to continue the representation must file a motion to withdraw with the court of appeals promptly after filing the notice of appeal, with a copy served on the defendant as well as on opposing counsel. The court gives due consideration to counsel's request to withdraw from representation recognizing that while there are benefits to continuity of representation, the skills necessary to proceed as appellate counsel may differ from those required for trial counsel. CJA Implementation Plan, Part II.8. If counsel's motion is granted, withdrawing counsel must apprise successor counsel of all information relevant to the defendant's appeal.

### **Compensation and Reimbursement of Expenses**

A \$8,600 limitation, exclusive of expenses, applies to the compensation payable to appointed counsel in this court. In appeals of post-trial motions, revocations of probation, or collateral proceedings, a \$2,600 limitation, exclusive of expenses, applies. Payment in excess of either limitation may be made to provide fair compensation in cases involving extended or complex representation, upon approval by the chief judge of the court of appeals.

CJA vouchers must be submitted within 60 days of final disposition of the case or, if a certiorari petition is prepared, within 60 days of filing the petition for writ of certiorari. The voucher must be supported by the attorney's time records, broken down according to the categories required by the voucher, and by detailed receipts for expenses. Counsel should use the worksheets provided by the clerk at the time of appointment. CJA vouchers are submitted electronically in the Fourth Circuit CJA eVoucher system.

## Related Links

- [Appointed Counsel](#)
- [CJA eVoucher](#)



## **APPEARANCE, DISCLOSURE & DOCKETING STATEMENTS**

### **Appearance of Counsel**

Counsel is required to file an appearance of counsel form within 14 days after the appeal is docketed or within 14 days after being retained or appointed, using a form provided by the clerk's office. Only attorneys admitted to the Fourth Circuit bar and registered as ECF filers may enter an appearance in a case. If an attorney is not admitted to practice before the court, counsel must file an application for admission under Local Rule 46(b) and register as an electronic filer in CM/ECF. An attorney no longer participating in a case should promptly inform the clerk's office of that fact. Loc. R. 46(c).

Once an appearance has been filed, an attorney may not withdraw from representation without notice to the party he or she is representing and consent of the court. A motion to withdraw should state fully the reason for the request. Substitution of counsel may be affected by submitting a counsel of record form for new counsel, along with existing counsel's motion to withdraw. Loc. R. 46(c).

### **Disclosure of Corporate Affiliations and Financial Interests**

A party in a civil, agency, bankruptcy, or mandamus case, other than the United States or a party proceeding in forma pauperis, must file a disclosure statement, except that a state or local government is not required to file a disclosure statement in a case in which the opposing party is proceeding without counsel. A corporate party in a criminal or post-conviction case must file a disclosure statement. A corporate amicus curiae is also required to file a disclosure statement.

The disclosure statement must identify all parent corporations and list any publicly held company that owns 10% or more of the party's stock or has a direct financial interest in the litigation by reason of a franchise, lease, profit sharing agreement, insurance, or indemnity agreement. This information is used by the judges to determine their disqualifications. Loc. R. 26.1.

If earlier papers are submitted by the parties, such as a motion for stay or injunction pending appeal, they must be accompanied by a disclosure statement. The disclosure statement must also be included in front of the table of contents in a party's principal brief.

A negative disclosure statement is also required, and all parties are under an affirmative duty to amend disclosure statements when necessary to maintain their current accuracy. Loc. R. 26.1.

A disclosure statement is required by the government if there was an organizational victim of the alleged criminal activity.

### **Docketing Statement**

Counsel filing a notice of appeal or petition for review is required to complete a docketing statement. Counsel's filing of the docketing statement also satisfies the requirement that the attorney filing the notice of appeal file a statement within 14 days identifying the parties the attorney represents on appeal. The form requests basic information on the parties, counsel, trial and appellate court jurisdiction, the procedural history of the case, the issues on appeal, and the existence of previous or related cases. In civil cases, docketing statements are reviewed by a circuit mediator to determine if the case should be assigned to the circuit mediation program under Local Rule 33.

Upon docketing an appeal or petition for review filed by counsel, the court of appeals notifies counsel that a docketing statement must be filed in the office of the clerk within 14 days. Loc. R. 3(b). The docketing statement must be accompanied by a copy of the transcript order and served on opposing counsel.

The attorney filing the notice of appeal is responsible for filing the docketing statement even if different counsel will handle the appeal. Multiple appellants joining in one notice of appeal shall file a joint docketing statement, but a separate docketing statement must be filed for a cross-appeal or additional appeal.

The nature of proceedings and relief sought should be stated summarily. The docketing statement should not contain argument or procedural motions. Effort should be made to include all the issues to be presented, but a party will not be precluded from raising additional issues later. Failure to file a docketing statement will cause the court of appeals to initiate the process of dismissal for failure to prosecute.

An opposing party who concludes that the docketing statement is in any way inaccurate or incomplete may so inform the clerk's office in writing, including additions or corrections, within 10 days of service.

## **Related Links**

- [Rule 3. Appeal as of Right - How Taken \(with Local Rules\)](#)
- [Rule 26.1 Corporate Disclosure Statement \(with Local Rule\)](#)
- [Rule 46. Attorneys \(with Local Rules\)](#)
- [Court Forms & Fees - Appearance, Disclosure, Docketing Statements](#)

## **TRANSCRIPT & RECORD ON APPEAL**

### **Transcript Order**

Federal and Local Rule 10 and the Guidelines for Preparation of Appellate Transcripts in the Fourth Circuit set forth the responsibilities and time frames for ordering transcript. The appellant (or cross-appellant) must order necessary transcript from the court reporter within 14 days after filing the notice of appeal. The court's notice of docketing notifies appellant that a copy of the transcript order must be attached to the docketing statement and that the statement of issues in the docketing statement satisfies the statement of issues requirement of Fed. R. App. P. 10(b) if less than the full transcript is ordered. Failure to order transcript or make satisfactory financial arrangements may lead to dismissal of the appeal. Loc. R. 10(c)(2).

### **Designation of Additional Parts of Transcript**

If the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 14 days after the service of the docketing statement and transcript order, file and serve on the appellant a designation of additional parts to be ordered.

### **Ordering Additional Parts of Transcript**

If the appellee designates additional parts of the transcript, the appellant may order the additional parts and notify appellee. If the appellant does not order the additional parts within 14 days, appellee may either order the additional parts within the next 14 days or move in the district court for an order requiring the appellant to do so.

### **Cross-Appeals**

In cross-appeals, each party must order those parts of the transcript pertinent to the issues of such appeals. The parties are encouraged to agree upon those parts of the transcript jointly needed and to apportion the cost, with additional portions being ordered and paid for by the party considering them essential to that party's appeal. Loc. R. 10(c)(1).

### **Transcript Deadlines**

Upon receipt of a copy of the transcript order, the court of appeals will issue a transcript order acknowledgment establishing a deadline by which the court reporter must file the transcript. Although Fed. R. App. P. 11(b) requires that transcripts be completed within 30 days from the purchase order date, the Fourth Circuit uses the time limits set forth in Local Rule 11(b), which establishes a 60-day period for preparation of transcripts, with the following exceptions: (1) criminal transcripts of less than 1000 pages must be filed within 30 days; (2) criminal transcripts of more than 1000 pages, and bail, death penalty and expedited case transcripts must be filed within the time set by the clerk.

If the court reporter needs an extension of time to complete the transcript, the reporter may file a motion for extension at least 10 days prior to the due date. If the transcript is filed late without an extension having been granted, a 10% fee reduction sanction is imposed. If the transcript is filed more than 30 days late, a 20% fee reduction sanction is imposed.

### **Transcript Format**

The name of the testifying witness and the type of examination (e.g., direct, cross, redirect, or recross) must be clearly indicated at the top of each page of the appendix where the witness's testimony appears. This requirement applies to in-court testimony and deposition testimony. Loc. R. 30(b). The court will not accept "condensed" transcript, wherein several pages of transcript appear on a single sheet, for inclusion in the appendix, considering the smaller pages not sufficiently legible under Fed. R. App. P. 32(b)(2).

### **Transcript Redaction**

Upon filing of a transcript in the district clerk's office, counsel (or a pro se party) has 7 days to file a notice of redaction with the district clerk setting forth his or her intention to direct the redaction of personal data identifiers from the electronic transcript. Unless otherwise ordered by the court, attorneys must review the following transcript: (1) opening and closing statements made on the party's behalf, (2) statements of the party (3) the testimony of any witnesses called by the party (4) sentencing proceedings and (5) any other portion of the transcript as ordered by the court. Where counsel has given notice of redaction, counsel must, within 21 days of filing of the transcript, submit to the court reporter a statement indicating where the personal data identifiers to be redacted appear in the transcript. The court reporter must, within 31 days of filing of the transcript, perform the requested redactions and file a redacted version of the transcript. Judicial Conference Policy on Privacy and Public Access to Electronic Case Files (March 2008).

### **Statement of the Evidence When No Transcript is Available**

If a record or transcript is unavailable, the appellant may prepare a statement of evidence from the best available means, including the appellant's recollection. Appellant shall serve the statement on appellee, who may serve objections or proposed amendments within 14 days after service. Appellant's statement and any objections or proposed amendments are then submitted to the district court for settlement and approval, and as settled and approved are included in the record on appeal. Fed. R. App. P. 10(c).

### **Compilation of the Record**

The record consists of the original case papers and exhibits filed in the district court, transcripts, and a certified copy of the docket entries. Fed. R. App. P. 10(a). The preparation of the record on appeal is the obligation of the clerk of the lower court, board or agency, and any questions concerning form or content should be addressed to the trial forum in the first instance. Parties should be sure that everything relevant to the

issues on appeal is included initially in the record on appeal in order to obviate the need to supplement the record.

### **District Court Record in Pro Se Cases**

In pro se cases, the assembled electronic record, and any sealed or paper record, are transmitted to the court of appeals at the time the notice of appeal is transmitted.

### **District Court Record in Counseled Cases**

In counseled cases, the record is not transmitted unless requested by the court of appeals. When transmitting the notice of appeal, the district court clerk certifies to the court of appeals that the record of docket entries is available upon request. The district court clerk also notifies the court of appeals of the subsequent filing of any transcript in the case.

### **Access of Counsel to District Court Record**

Counsel desiring to use an existing paper record on appeal in preparing their case should make arrangements with the clerk of the district court in which the record is held pursuant to Local Rule 10(a). Records transmitted to the court of appeals may be withdrawn upon proper application and returned to the trial court for counsel's review. Loc. R. 11(d). Most district court records are available in electronic form on the district court's CM/ECF docket. Record documents can be accessed individually or selected and combined for creation of an electronic appendix.

### **Exhibits**

If bulky documents and physical exhibits are required by a party for oral argument, the party must make advance arrangements with the clerks of both the district court and the court of appeals for their transportation and receipt. Such arrangements are best made after the completion of briefing and receipt of notice of oral argument. Loc. R. 11(c).

### **Agreed Statement of the Record on Appeal**

In lieu of the record on appeal, the parties may prepare and sign a statement of the court setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the district court may consider necessary, shall be approved by the district court and certified as the record on appeal. Copies of the agreed statement may be filed as the appendix required by Rule 30. Fed. R. App. P. 10(d).

### **Supplemental Records, Modification or Correction**

Under Fed. R. App. P. 10(e) and Local Rule 10(d), disputes concerning the accuracy or composition of the record on appeal should be resolved in the trial court in the first instance, although the court of appeals has the power, either on motion or of its own accord, to require that the record be corrected or supplemented. The record may be

supplemented by the parties by stipulation or by order of the district court at any time during the appellate process, without need to seek permission from the court of appeals. Loc. R. 10(d).

## **Administrative Record in Social Security Disability Appeals and Immigration Review Cases**

In social security disability cases appealed from the district court, the record on appeal may be composed of both the agency and the district court records. If the agency record has been filed with the district court, it may be contained within the district court record when it's transmitted to the court of appeals. If the agency record was not transmitted to the district court by the agency, it's not necessary for the agency to file the administrative record with the court of appeals.

In immigration review cases, the agency files an electronic or paper copy of its administrative record in the court of appeals within 40 days after issuance of the notice requesting the record.

## **Record in Other Agency Review Cases**

In other agency review and enforcement cases, the agency files its original record in the court of appeals 40 days after issuance of the notice requesting the record. The court of appeals returns the original record to the agency upon issuance of the mandate.

## **Certified List**

In lieu of filing the entire record in an agency case, the agency may file a certified list of what is encompassed in the record. Fed. R. App. P. 17(b). The parties may also stipulate to dispense with the filing of the certified list. All parts of the record retained by the agency remain part of the record on review. In enforcement proceedings, the agency need not file a record unless the respondent contests enforcement by filing a response or the court otherwise orders.

## **Tax Court Records**

The tax court files the record within 14 days of issuance of the briefing schedule. The tax court record is returned to the tax court upon issuance of the mandate.

## **Related Links**

- [Transcript Guidelines](#)
- [Judicial Conference Privacy Policy for Electronic Case Files](#)
- [Record Access for New Appellate Counsel](#)
- [Rule 10. The Record on Appeal \(with Local Rules\)](#)
- [Rule 11. Forwarding the Record \(with Local Rules\)](#)
- [Court Forms & Fees - Transcripts](#)

## **MEDIATION**

### **Local Rule 33**

Under Local Rule 33, all civil and agency cases in which all parties are represented by counsel on appeal will be reviewed by a circuit mediator after the filing of the docketing statements required by Local Rule 3(b). The circuit mediator will determine whether a mediation conference may assist either the court or the parties. Counsel for a party may also request a conference if counsel believes it will be of assistance to the court or the parties. Counsel's participation is required at any scheduled conference. Mediation conferences will generally be conducted by telephone but may be conducted in person at the discretion of a circuit mediator. Conferences may be adjourned from time to time by the circuit mediator. Purposes of the conference include:

- (a) Jurisdictional review;
- (b) Simplification, clarification, and reduction of issues;
- (c) Discussion of settlement; and
- (d) Consideration of any other matter relating to the efficient management and disposition of the appeal.

### **Briefing**

The time allowed for filing of briefs is not automatically tolled during the mediation proceedings. If the parties wish to pursue, or are engaged in, settlement discussions, counsel for any party may move to suspend the briefing schedule. The circuit mediator, through the clerk, may enter orders which control the course of proceedings and, upon agreement of the parties, dispose of the case.

### **Confidentiality**

Statements and comments made during mediation conferences and papers or electronic information generated during the process are not included in court files except to the extent disclosed by orders entered under Local Rule 33. Information disclosed in the mediation process shall be kept confidential and shall not be disclosed to the judges deciding the appeal or to any other person outside the mediation program participants. The mediator, attorneys, and other participants in a mediation shall not disclose any statements, documents, or discussions without prior approval of the Standing Panel on Attorney Discipline. Any alleged violations of the confidentiality requirements of Local Rule 33 shall be referred to the Standing Panel on Attorney Discipline for a determination of whether imposition of discipline is warranted.

### **Related Links**

- [Mediation](#)
- [Rule 33, Appeal Conferences \(with Local Rule\)](#)

## **MOTION PRACTICE**

### **Motion Length & Content**

A motion cannot exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. Fed. R. App. P. 27(d).

A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. Fed. R. App. P. 27(a)(2)(A). A motion seeking substantive relief must include a copy of the trial court's opinion or agency decision as a separate exhibit. Fed. R. App. P. 27(a)(2)(B). A separate brief supporting a motion must not be filed; neither a notice of motion nor a proposed order is required. Fed. R. App. P. 27(a)(2)(C). A disclosure statement must accompany the motion unless previously filed with the court. Loc. R. 27(c). Parties should not make requests for procedural and substantive relief in a single motion but should make each request in a separate motion. Loc. R. 27(c).

### **Statement Regarding Consent**

In cases where all parties are represented by counsel, all motions must contain a statement by counsel that counsel for the other parties to the appeal have been informed of the intended filing of the motion. The statement must indicate whether other parties consent to the granting of the motion, or intend to file responses in opposition. Loc. R. 27(a).

### **Response Length & Content**

A response cannot exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. Fed. R. App. P. 27(d).

A separate brief supporting a response must not be filed. A disclosure statement must be filed with the response unless one has previously been filed. Loc. R. 27(d)(1). A response may include a motion for affirmative relief, but the title of the response must alert the court to the request for relief. Fed. R. App. P. 27(a)(3).

### **Response Deadline**

Any party may file a response within 10 days after service of the motion unless the court shortens or extends the time. Fed. R. App. P. 27(a)(3). Although any party may respond, a response is not required unless directed by the court. Loc. R. 27(d)(1). A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner. Fed. R. App. P. 27(a)(3).

### **Reply Length & Content**



A reply cannot exceed 2,600 words (10 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. Fed. R. App. P. 27(d). A reply must not present matters that do not relate to the response. Fed. R. App. P. 27(a)(4).

### **Reply Deadline**

Any reply to a response must be filed within 7 days after service of the response. The court will not ordinarily await a reply before reviewing a motion and response. Movants intending to reply may so notify the clerk in writing and request that the court not act until the reply is received. Loc. R. 27(d)(2).

### **Format**

Motions, responses, and replies must be double-spaced, with 1" margins, on 8 ½ x 11" sized paper. The document must contain a caption setting forth the name of the court, the title of the case, the case number, a brief descriptive title, and must identify the party(ies) for whom it is filed. Typeface must be a 12-point monospaced font (such as Courier) or a 14-point proportional font (such as Times New Roman). Fed. R. App. P. 27(d).

### **Clerk Orders**

The clerk is authorized by the court to act on unopposed procedural motions and motions relating to the preparation of the briefs and appendix. Loc. R. 27(b). Any party dissatisfied with the clerk's disposition may request reconsideration by the court within 14 days of entry of the clerk's order.

### **Court Orders**

Under Local Rule 27(e), the court acts on all but routine procedural matters through three-judge panels. In emergency matters, in which time prevents consideration by three judges, consideration by a single judge can be requested. If the single judge considers the emergency request, the matter will be presented for consideration by a three-judge panel at the earliest possible time. Loc. R. 27(e). Motion assignments are made in rotation to randomly generated panels unless a panel has had prior involvement in the case. Motions are generally decided without oral argument.

### **Related Links**

[Rule 27. Motions \(with Local Rules\)](#)

## **SPECIFIC MOTIONS**

### **Motions for Stay or Injunction Pending Appeal**

Counsel wishing to stay a judgment during the pendency of an appeal must file a motion for stay pending appeal. Fed. R. App. P. 8; Loc. R. 8. See also Loc. R. 18 (stay pending consideration of petition for review); Loc. R. 21(b) (temporary relief pending consideration of mandamus petition). Filing a notice of appeal does not automatically stay the operation of the judgment. Loc. R. 8. Counsel seeking emergency relief should notify the clerk's office of the intended filing of the motion to facilitate the rapid docketing and transmission of the necessary papers.

- **Filing in District Court**

Application for a stay or injunction pending appeal must ordinarily be made in the first instance in the district court. Fed. R. App. P. 8(a)(1). If an application to the district court for temporary relief pending appeal is not practicable, counsel must make a specific showing of the reasons the application was not made to the district court in the first instance. Loc. R. 8.

- **Content**

A motion for stay shall state the reasons for the relief requested and the facts relied upon and, if the facts are subject to dispute, shall be supported by an affidavit. Fed. R. App. P. 8(a). The motion shall include copies of all previous applications for relief and their outcome; a corporate disclosure statement (unless one has been previously filed); and any parts of the record or other materials essential to a fair presentation of the issues. Loc. R. 8.

- **Emergency Applications to Single Judge**

Ordinarily, counsel shall present all motions to the clerk for presentation to the Court. Application to a single judge should be made only in exceptional circumstances where action by a panel would be impractical due to the requirements of time. In such exceptional circumstances, counsel shall attempt to notify the clerk's office that application is being made directly to a single judge, and copies of all papers presented to the judge shall be presented to the clerk as soon as practical for filing. Loc. R. 27(e).

When a single judge determines to act, the matter will be referred to a panel as early in the process as is practical. As soon as a matter has been assigned to a panel, any action in the matter will be decided by the panel. Loc. R. 27(e).

### **Motions for Bail Pending Appeal**

- **Prior to Judgment of Conviction**

A criminal defendant may be released in accordance with the conditions set by the district court prior to judgment. If the district court refuses to release the

prisoner, or sets conditions for release that cannot be met, the order is appealable as a matter of right and will be given prompt consideration by the court of appeals. The appeal is presented without the necessity of briefs or a record upon such papers, affidavits and portions of the record as the parties shall present. Counsel should promptly submit memoranda in support of their position on appeal, and the appeal is usually decided without oral argument upon the materials presented by the parties. Fed. R. App. P. 9(a); Loc. R. 9(a).

- **After Conviction and Notice of Appeal**

Application to set bail or for reduction of bail pending appeal must be made first to the district court. After action by the district court, the appellant may, if an appeal has been taken from the conviction, file a motion for release, or for a modification of the conditions of release, in the court of appeals without noting an additional appeal. A copy of the district court statement of reasons and the judgment of conviction must accompany the motion. Fed. R. App. P. 9(b); Loc. R. 9(b).

- **Bail Appeal**

The government may file an appeal from the district judge's order concerning release pending appeal. 18 U.S.C. § 3145. The appellant may also challenge the trial judge's order by a separate appeal under this statute. The appellant should not pursue both remedies -- a Rule 9(b) motion and a § 3145 appeal. The court encourages use of the Rule 9(b) motion.

## **Motions to Expedite**

The court on its own motion or on motion of the parties may expedite an appeal for briefing and oral argument. Any motion to expedite should state clearly the reasons supporting expedition, the ability of the parties to present the appeal on the existing record, and the need for oral argument. Loc. R. 12(c).

As required by Local Rule 27(a) for all motions, a motion to expedite should state the position of opposing counsel. If opposing counsel agrees to expedited briefing, the motion should set forth the schedule agreed to by counsel. The granting of a motion to expedite affects the briefing and/or oral argument of the case; the timing of the ultimate disposition rests within the discretion of the panel.

## **Motions for Abeyance**

In the interest of docket control the court may, either on its own motion or upon request, place a case in abeyance pending disposition of matters before this court or other courts which may affect the ultimate resolution of an appeal. During the period of time a case is held in abeyance, the appeal remains on the docket but nothing is done to advance the case to maturity and resolution. The parties will be required to make periodic status reports and/or notify the court of appeals upon resolution of the matter for which the case was placed in abeyance. Loc. R. 12(d).

## **Motions to Intervene**

A party who appeared as an intervenor in a lower court proceeding shall be considered a party to the appeal upon filing a notice of appearance. Otherwise, a motion for leave to intervene must be filed with the court of appeals. Any notice of appearance or motion to intervene should indicate the side upon which the movant proposes to intervene. Loc. R. 12(e).

- **Intervention in Agency Review Proceeding**

Intervention in agency review proceedings is governed by Fed. R. App. P. 15(d). A motion for leave to intervene in an agency review proceeding shall be filed in the court of appeals and served on all parties to the proceeding within 30 days of the date on which the petition for review was filed. The motion shall contain a concise statement of the interest of the moving party and the grounds upon which intervention is sought.

- **Government Intervention in Challenge to Constitutionality of Law**

Under Fed. R. App. P. 44, it is the duty of a party who draws into question the constitutionality of any federal or state statute in any proceeding to which the federal or state government is not a party, to give immediate notice in writing to the court of the existence of said question. The clerk shall thereupon certify such fact to the Attorney General of the United States or the appropriate state. The government may thereafter intervene to defend the constitutionality of the federal or state law at issue in the appeal. 28 U.S.C. § 2403; Fed. R. App. P. 44.

- **Joint Briefing and Argument**

Intervenors are required to join in the brief for the side which they support unless leave to file a separate brief is granted by the court. Loc. R. 12(e) & 28(a). Intervenors share as parties in the argument time allotted under Local Rule 34(d) to the side they support.

## **Motions to Dismiss**

To avoid unnecessary briefing of the case on the merits, motions to dismiss on jurisdictional or other procedural grounds should be filed within the time allowed for the filing of the response brief. Loc. R. 27(f). The clerk's office will obtain a response, and the motion and response will be referred to a randomly selected motions panel.

Briefing is not automatically stayed upon filing of a motion to dismiss. Accordingly, counsel wishing a stay of the briefing schedule should file a motion to suspend briefing pending disposition of the motion to dismiss.

## **Motions for Summary Affirmance or Reversal**

Motions for summary affirmance or reversal filed prior to completion of briefing should include a showing that the issues raised are manifestly unsubstantial and appropriate

for disposition by motion. Local R. 27(f). Absent such a showing, the court will defer action on the motion until briefing is complete. Local R. 27(f).

The court may summarily dispose of any appeal at any time. Loc. R. 27(f).

### **Motions to Submit on the Briefs**

As soon as possible upon completion of the briefing schedule, or within 10 days of tentative notification of oral argument, whichever is earlier, any party may file a motion to submit the case on the briefs without the necessity of oral argument. Loc. R. 34(e). The clerk's office notice tentatively calendaring a case for oral argument generally affords the parties 10 days to file a motion to submit on the briefs or other motion that will affect the scheduling of the case.

### **Motions for Voluntary Dismissal**

When an appeal has not been docketed in the court of appeals, the district court may dismiss on a stipulation of dismissal signed by the parties or on the motion and notice of appellant. Fed. R. App. P. 42(a). Since the time between notice of appeal in the district court and docketing in the court of appeals is short, such dismissals are unusual. Once the appeal is docketed, the court of appeals may dismiss upon filing with the clerk an agreement signed by the parties stipulating dismissal and specifying the terms of payment of costs, and paying any outstanding fees. An appeal may also be dismissed on motion of the appellant according to terms agreed to by the parties or set by the court. Fed. R. App. P. 42(b). As an additional protection in criminal appeals, Local Rule 42 requires that the defendant must personally sign a Rule 42(b) motion to dismiss a criminal appeal.

### **Related Links**

- [Rule 8. Stay or Injunction Pending Appeal \(with Local Rule\)](#)
- [Rule 9. Release in a Criminal Case \(with Local Rule\)](#)
- [Rule 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record \(with Local Rules\)](#)
- [Rule 15. Review or Enforcement of an Agency Order – How Obtained; Intervention \(with Local Rules\)](#)
- [Rule 18. Stay Pending Review \(with Local Rule\)](#)
- [Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs \(with Local Rule\)](#)
- [Rule 27. Motions \(with Local Rules\)](#)
- [Rule 42. Voluntary Dismissal \(with Local Rule\)](#)

## FORMAL BRIEFING

### Use of Formal Briefing Schedule

The court uses a formal briefing schedule in appeals in which both sides are represented by counsel, with the following exceptions:

- In an appeal from the denial of relief under 28 U.S.C. § 2254 or 2255 in a non-capital counseled case, a formal briefing schedule is not set until a certificate of appealability has been granted in whole or in part.
- A formal briefing schedule is not set for a petition for permission to appeal unless otherwise ordered by the court.
- A formal briefing schedule is not set for a mandamus petition unless the court determines that formal briefing and oral argument would aid in resolution of the petition.
- A formal briefing schedule is not used in counseled bail appeals and recalcitrant witness appeals; the court instead uses an expedited memorandum briefing schedule.

### Briefing Schedule

The court sets the briefing schedule when the record is complete and sends notice to the parties of the dates the briefs are to be filed. See Loc. R. 10(a) & 31(b).

<b>Standard Briefing Order</b>	<b>Criminal</b>	<b>Civil/Agency</b>
Opening Brief & Appendix	35 days from date of order	40 days from date of order (add 40 days in immigration and social security cases for filing of the administrative record)
Response Brief	21 days from service of opening brief	30 days from service of opening brief
Reply Brief	10 days from service of response brief	21 days from service of response brief
<b>Cross Appeal Briefing Order</b>	<b>Criminal</b>	<b>Civil/Agency</b>
Opening Brief & Appendix	35 days from date of order	40 days from date of order (add 40 days in immigration and social security cases for filing of administrative record)
Opening/Response Brief	21 days from service of opening brief	30 days from service of opening brief
Response/Reply Brief	21 days from service of opening/response brief	30 days from service of opening/response brief
Reply Brief	10 days from service of response/reply brief	21 days from service of response/reply brief

<b>FRAP 30(c) Briefing Order</b>	<b>Criminal</b>	<b>Civil/Agency</b>
Page-Proof Opening Brief	35 days from date of order	40 days from date of order (add 40 days in immigration and social security cases for filing of administrative record)
Page-Proof Response Brief	21 days from service of opening brief	30 days from service of opening brief
Appendix	14 days from service of response brief	14 days from service of response brief
All Briefs in Final Form	10 days from service of appendix	10 days from service of appendix
<b>FRAP 30(c) Cross Appeal Briefing Order</b>	<b>Criminal</b>	<b>Civil/Agency</b>
Page-Proof Opening Brief	35 days from date of order	40 days from date of order (add 40 days in immigration and social security cases for filing of the administrative record)
Page-Proof Opening/Response Brief	21 days from service of opening brief	30 days from service of opening brief
Page-Proof Response/Reply Brief	21 days from service of opening/response brief	30 days from service of opening/response brief
Appendix	14 days from service of response/reply brief	14 days from service of response/reply brief
All Briefs in Final Form	10 days from service of appendix	10 days from service of appendix
<b>Amicus Brief</b>	<b>Criminal</b>	<b>Civil/Agency</b>
State or Federal Government (consent or leave of court not required)	7 days after filing of principal brief by party being supported	7 days after filing of principal brief by party being supported
Other Parties (requires consent of parties or leave of court)	7 days after filing of principal brief by party being supported	7 days after filing of principal brief by party being supported

## Extensions

Extensions of time to file briefs will be granted only when extraordinary circumstances exist. A motion for extension of time to file a brief must be filed well in advance of the date the brief is due and must set forth the additional time requested and the reasons for the request. The court discourages these motions and may deny the motion entirely or grant a lesser period of time than requested. Loc. R. 31(c).

## Failure to File Brief

If appellant fails to timely file its brief, the clerk's office will issue notice under Local Rule 45 that the appeal will be dismissed unless counsel remedies the default within 15 days. If appellant is represented by court-appointed counsel, the clerk will issue notice of intent to initiate disciplinary action under Local Rule 46(g) instead of threatening dismissal under Local Rule 45. If appellee fails to file a brief, the appellee will not be heard at any oral argument scheduled in the matter except by leave of court. Fed. R. App. P. 31(c).

## **Leave to File Amicus Briefs**

The court will prohibit the filing of or strike an amicus brief that would result in the recusal of a member of the panel that has been assigned to the case or in the recusal of a member of the en banc court from a vote on whether to hear or rehear a case en banc. Loc. R. 29(a).

## **Corrections**

If briefs or appendices are illegible or are not in the form required by the rules, counsel will be required to file corrected copies of the document. If the corrected copies are not submitted within the time allowed by the clerk, they must be accompanied by a motion to extend filing time. Loc. R. 32(c).

## **Brief Citations to the Appendix (effective 07/15/2022)**

The Court has implemented a “Citelinks” utility within the Judiciary’s CM/ECF system that hyperlinks appendix citations in the briefs to the cited page of the appendix. The Citelinks functionality requires that counsel paginate the appendix using Bates page numbering and a standard format and that citations to the appendix in the brief follow the same format. Citelinks leaves the official filing in PACER unchanged but creates hyperlinks in copies of the briefs and appendices used by the Court. See Appendix Pagination & Brief Citation Guide for additional information.

## **Related Links**

- [Rule 28, Briefs \(with Local Rules\)](#)
- [Rule 28.1, Cross Appeals](#)
- [Rule 29, Brief of an Amicus Curiae](#)
- [Rule 30, Appendix to the Briefs \(with Local Rules\)](#)
- [Rule 31, Serving and Filing Briefs \(with Local Rules\)](#)
- [Rule 32, Form of Briefs, Appendices, and other Papers \(with Local Rules\)](#)
- [Rule 32.1, Citing Judicial Dispositions \(with Local Rule\)](#)
- [Court Forms & Fees – Formal Briefs & Appendices](#)
- [Fourth Circuit Appendix Pagination & Brief Citation Guide](#)



## **FOURTH CIRCUIT BRIEF & JOINT APPENDIX REQUIREMENTS (07/15/2022)**

(Briefs and appendices filed under briefing orders issued on or after 07/15/2022 must comply with the [Fourth Circuit Appendix Pagination and Brief Citation Guide](#).)

Note on Paper Copies: Paper copies of briefs and appendices are currently not required unless otherwise ordered by the court. Four paper copies are typically ordered if a case is tentatively calendared for argument.

### **BRIEF CONTENTS (in order of appearance). See Federal & Local Rules 28, 28.1, 29.**

<b>Required Contents</b>	<b>Brief Type</b>
Brief Cover	All briefs. <a href="#">Brief Cover-District Court Appeal</a> , <a href="#">Brief Cover-Agency Appeal</a>
Disclosure Statement	If disclosure statement required by Loc. R. 26.1, copy must be included in initial brief of party or amicus.
Table of Contents	All briefs
Table of Authorities	All briefs (cases alphabetically arranged, statutes and other authorities, with references to the page of the brief where they are cited)
Statement of identity of amicus	Amicus briefs must contain a concise statement of the identity of the amicus, its interest in the case, and the source of its authority to file.
Statement regarding amicus brief authorship and funding	Amicus briefs (unless filed by federal or state government) must state whether (i) a party's counsel authored the brief in whole or part; (ii) whether a party or party's counsel contributed money intended to fund the brief; and (iii) whether a person other than amicus, its members, or its counsel contributed money intended to fund the brief (and if so identify any such person).
Jurisdictional Statement (subject matter & appellate jurisdiction)	Opening briefs and opening/response briefs
Statement of Issues	Opening briefs and opening/response briefs
Statement of Case (relevant facts, procedural history, rulings presented for review, with joint appendix citations)	Opening briefs. Not required in appellee's response or opening/response brief if appellee is satisfied with appellant's statement of case.
Summary of Argument (succinct statement of arguments)	Opening, opening/response, and response briefs
Argument (discussion of issues, with standard of review stated either in a separate heading before the discussion of issues or placed in the discussion)	Argument section is required in all briefs. Statement of standard of review is required only in opening and opening/response briefs unless the responding party is dissatisfied with the stated standard.
Conclusion (relief sought)	Opening briefs and opening/response briefs
Request for Oral Argument (if any)	Opening, opening/response, and response briefs may include a statement explaining why oral argument should, or need not, be permitted.
Signature of Counsel	All briefs
Certificate of Compliance with Type-Volume Limit	All briefs. Not required if brief is within applicable page limitations. <a href="#">Form-Certificate of Compliance with Type-Volume Limit</a>
Certificate of Service	For briefs not served electronically through ECF. <a href="#">Form-Certificate of Service</a> , <a href="#">Form-Certificate of Service of Anders Brief</a>

BRIEF FORMAT. See Federal & Local Rules 25, 28, 28.1, 29 & 32.	
Cover Color: Standard Schedule	Blue for opening. Red for response. Gray for reply.
Cover Color: Cross-appeal Schedule	Blue for opening. Red for opening/response. Yellow for response/reply. Gray for reply.
Cover Color: Amicus or Intervenor	Green. Amicus briefs filed during consideration of whether to grant rehearing are filed in electronic form only, and the electronic cover may be white.
Cover Color: Supplemental	Tan
Cover Color: Electronic	White or same color as paper cover.
Brief Cover Content	Fourth Circuit docket number, centered at top (do not include district or agency docket number), followed by "United States Court of Appeals for the Fourth Circuit," followed by full case title, followed by "Appeal from the U.S. District Court for the District of ...," followed by "Brief of Appellant John Doe," followed by names, addresses, and phone numbers of counsel participating in preparation of brief. Counsel listed on the covers of the principal briefs will be listed as "on brief" attorneys on the court's opinion. The cover of an amicus brief must identify the party or parties supported and indicate whether the brief supports affirmance or reversal.
Brief Binding	Binding must be secure down full left side and must not obscure text. Acceptable bindings include spiral and perfect binding (no staples or clips).
Brief Paper	8 ½ x 11" light paper with clear black image, and 1" margin on all sides.
Brief Text	Text must be double-spaced (quotes > 2 lines, headings, & footnotes may be single-spaced but may not be in a smaller font size). Electronic version must be text-searchable.
Brief Citations to the Appendix	<p>Citations to the joint appendix must be in the format used for Bates numbering of the appendix. Brief citations to the administrative record are prohibited. See <a href="#">Fourth Circuit Appendix Pagination and Brief Citation Guide</a>.</p> <ul style="list-style-type: none"> <li>• Use JA or J.A. as the prefix for joint appendix citations.</li> <li>• Use SA or S.A. as the prefix for supplemental appendix citations.</li> <li>• A space between the prefix and the page number is optional. Note that using a space makes the citation two words rather than one.</li> <li>• Sealed volumes are paginated and cited as continuous to, and in the same format as, unsealed volumes (JA, J.A., SA, or S.A.).</li> <li>• No characters or letters are permitted between prefix and page number.</li> <li>• Do not use <i>id.</i>, <i>infra</i>, or <i>supra</i> when citing to the appendix.</li> <li>• Placing citations in parentheses or brackets is optional.</li> <li>• Repeat all digits when citing consecutive pages.</li> <li>• Repeat the prefix when citing non-consecutive pages.</li> <li>• Examples: <ul style="list-style-type: none"> <li>• JA123, JA 123, J.A.123, J.A. 123 are all acceptable.</li> <li>• SA123, SA 123, S.A.123, S.A. 123 are all acceptable.</li> <li>• JA321-322, <b>not</b> JA321-22.</li> <li>• JA400, JA423, <b>not</b> JA400, 423.</li> </ul> </li> </ul>
Hyperlinks in Briefs	Counsel may include hyperlinks to cited law and to documents filed on appeal or in the district court. Standard citations must be provided in addition to any hyperlink.

Addenda & Attachments to Briefs	Statutes, rules, and regulations requiring study by the court and unpublished dispositions that are not available in a publicly accessible electronic database may be included in an addendum at the end of the brief. If counsel wishes to supplement the brief with any other matters, the additional material must be presented to the court under separate cover, accompanied by a motion to file the material as an attachment to the brief.
Brief Font	If a proportional font is used (e.g., Times New Roman), font size must be 14 point. If a monospaced font is used (e.g., Courier New), font size must be 12 point. If a proportional font is used, the typeface must have serifs (small horizontal or vertical strokes at the ends of the letters). Sans-serif type, such as Arial, may not be used except in captions and headings.
Length of opening brief, response brief & response/reply brief	$\leq 30$ pages or $\leq 13,000$ words or $\leq 1,300$ lines (applies only to monospaced font)
Length of opening/response brief	$\leq 35$ pages or $\leq 15,300$ words or $\leq 1,500$ lines (applies only to monospaced font)
Length of reply brief or amicus brief	$\leq 15$ pages for reply or amicus brief or $\leq 6,500$ words for reply or amicus brief or $\leq 650$ lines (applies only to monospaced font) An amicus brief in support of an opening/response brief in a cross-appeal may contain up to 7,650 words. An amicus brief filed during consideration of whether to grant rehearing may not exceed 2,600 words.
<b>Note on Word Count:</b> When using Microsoft Word to review the "Word Count," you must select the check box next to "include textboxes, footnotes and endnotes" in the Word Count dialogue window for footnotes to be included in the total. <b>Include</b> all footnotes, headings, and quotations in a word or line count. <b>Exclude</b> all of the following from a word or line count: cover page, disclosure statement, table of contents, table of authorities/citations, request for argument, addendum, signature block, and certificates of counsel.	
Brief Copies	File electronic version. Paper copies are not currently required unless otherwise ordered by the court. Four paper copies are typically ordered if the case is tentatively calendared for argument. Single-sided copying is required. Service of paper copies is not required for parties served electronically. The court does not require paper copies of amicus briefs filed at the petition for rehearing stage.
Sealed and Public Versions of Briefs	If sealed information is included in the brief, counsel must file sealed and public briefs and a certificate of confidentiality in electronic form. Sealed material is highlighted in sealed briefs and redacted in public briefs. In criminal cases, information on substantial assistance or cooperation with the government must be sealed. Paper filing is required only if ordered by the court, but sealed briefs must be served on counsel outside ECF since they are not accessible to counsel from ECF. <a href="#">Form-Certificate of Confidentiality</a> <a href="#">Memorandum on Sealed and Confidential Materials</a>

<b>JOINT APPENDIX CONTENT. See Federal &amp; Local Rules 30 &amp; Local Rule 25.</b>	
Required Joint Appendix Contents	<p>The parties should include in the joint appendix all portions of the record necessary to review of the matters presented. Failure to include all necessary portions will result in return of the joint appendix for correction. The following must be included in the joint appendix in chronological order on consecutively numbered pages:</p> <ul style="list-style-type: none"> <li>• Cover</li> <li>• Table of contents</li> <li>• District court docket report</li> <li>• Complaint as finally amended (civil) or indictment (criminal)</li> <li>• Relevant portions of pleadings, transcript, charge, findings, opinions</li> <li>• Final opinion and order appealed</li> <li>• Notice of appeal</li> </ul>
Joint Appendix Table of Contents	<p>A detailed table of contents is required. When transcript is included, each witness must be identified, along with the page on which that witness's testimony begins. Exhibits must be identified by number, description, and page on which they begin.</p> <p>If there is more than 1 volume of joint appendix, either the full table of contents or the portion applicable to the particular volume must be included with each volume of joint appendix.</p>
Criminal Presentence Reports and Statements of Reasons	<p>The presentence report and statement of reasons must be included in a sealed volume of the joint appendix in any appeal raising a sentencing guideline challenge.</p>
Joint Appendices in Appeals under <u>Anders v. California</u> , 386 U.S. 738 (1967)	<p>The court now requires joint appendices in <u>Anders</u> appeals. The joint appendix should include all transcript, pleadings, and orders relating to the criminal appeal, including transcript of pre-trial, trial, guilty plea, and sentencing proceedings (arraignment, bail hearing, voir dire, and opening and closing argument transcript is not required unless relevant to a potential issue). CJA counsel should file a motion to exceed length limitations if the joint appendix exceeds 500 pages.</p>
Joint Appendices in Agency Review Cases	<p>The agency is required to file an administrative record or certified list in agency review cases. The petitioner in agency review cases is required to file a joint appendix. If the administrative record was filed in electronic form, the petitioner may download the administrative record, add a joint appendix cover page, paginate the joint appendix using the Bates page numbering and JA or J.A. formatting required by the <a href="#">Fourth Circuit Appendix Pagination &amp; Brief Citation Guide</a>, and file it as a JOINT APPENDIX.</p> <p>In social security cases, the joint appendix must include necessary materials from both the district court record and the administrative record and must be formatted, paginated, filed, and cited as a joint appendix, using a JA or J.A. prefix.</p>
<b>JOINT APPENDIX FORMAT – See Federal &amp; Local Rules 31 &amp; 32</b>	
Joint Appendix Pagination	<p>Joint appendices must be paginated using the Bates Numbering feature of your PDF software and consist of a JA or J.A. prefix followed by the page number. A space between the prefix and the page number is optional. Note that using a space makes citations in the brief two words rather than one. Leading zeros in the page number are permitted but not required.</p> <p>Use continuous pagination through all joint appendix and sealed joint</p>

	<p>appendix volumes. Do not include volume numbers. Do not insert additional pages without renumbering the joint appendix.</p> <p>Page numbers must have a font size of at least 14 points, must be placed in the bottom margin, and must be legible. Redact any existing page numbering that overlaps the Bates number. See <a href="#">Fourth Circuit Appendix Pagination &amp; Brief Citation Guide</a>.</p>
Joint Appendix Text	The appendix must be <b>saved to PDF</b> rather than printed to PDF to enable identification of Bates page numbers. It is strongly preferred that the electronic version of the appendix be text searchable.
Joint Appendix Cover	<p>Joint appendix covers are white and contain the following information: Fourth Circuit docket number, centered at top (do not include district or agency docket number), followed by “United States Court of Appeals for the Fourth Circuit,” followed by full case title, followed by “Appeal from the U.S. District Court for the District of ...,” followed by “Joint Appendix,” followed by names, addresses, and phone numbers of <b>counsel on both sides of the case</b>.</p> <p><a href="#">Appendix Cover-District Court Appeal</a>, <a href="#">Appendix Cover-Agency Appeal</a></p>
Appendix Volume Size & Binding	<p>If paper copies are required, the paper copies of appendices must be securely bound down full left side in a manner that does not obscure text and permits the appendix to lie reasonably flat when open. Acceptable bindings include spiral and perfect binding (no staples or clips). Each bound volume should not exceed 1 ½” in thickness (700 pages), and paper and electronic volumes must match. Exhibit volumes must be bound unless binding is impracticable.</p>
Transcript	The name of the testifying witness and type of examination (direct, cross, deposition) must be clearly indicated at the top of each page of in-court or deposition testimony included in the joint appendix. The court will not accept appendices containing “condensed” transcript wherein several pages of transcript appear on a single sheet.
Length of Appendices	In a case with CJA counsel, a motion to exceed length limitations must be filed if the length of the appendix exceeds 500 pages.
Joint Appendix Copies	<p>File electronic version. Paper copies are not currently required unless otherwise ordered by the court. Four paper copies are typically ordered if the case is tentatively calendared for argument.</p> <p>Double-sided copying of appendices is preferred in all cases. If there is more than 1 volume of appendix, each electronic volume must correspond to each paper volume.</p> <p>Service of paper copies is not required for parties served electronically.</p>
Sealed Joint Appendix Volumes	<p>Sealed record documents that are included in the joint appendix must be placed in a separate, sealed volume of the joint appendix and filed with a certificate of confidentiality.</p> <p>Pagination for sealed joint appendix volumes begins after the last page of the unsealed volumes and uses the same J.A. or JA prefix as unsealed volumes.</p> <p>Paper filing is required only if ordered by the court, but sealed appendix volumes must be served on counsel outside ECF since they are not accessible to counsel through ECF.</p> <p>In consolidated criminal appeals, materials must be separately sealed as to each defendant by marking the volume and envelope as SEALED – [DEFENDANT’S NAME] and serving the volume only on the government and counsel for the named defendant.</p>

	<a href="#">Form-Certificate of Confidentiality</a> <a href="#">Memorandum on Sealed and Confidential Materials</a>
Digital Media Volume  <i>(Exhibits that were not part of the record below may not be included in the joint appendix and may be filed only with leave of court.)</i>	<p>Digital media files that are part of the record may be included in the joint appendix by creating a separate digital media volume of the joint appendix consisting of a cover page and table of contents. The following information must be included in the table of contents or in a separate statement following the table of contents: (1) description of the record exhibit; (2) identification of a file format compatible with Windows Media Player (e.g., mp3, mp4, wav); and (3) statement that media was confirmed virus-free through virus scan.</p> <p>When the cover page and table of contents for the digital media volume are uploaded to ECF, the clerk's office will send counsel a notice with instructions to upload the digital media files and another copy of the cover page and table of contents to Box.com. When counsel has successfully uploaded the files, the clerk's office will send counsel notice that the digital media files have been stored to the court's systems. You must serve the digital media on counsel outside ECF.</p>
Supplemental Appendix	<p>A supplemental appendix may be filed only with leave of court for good cause shown.</p> <p>Supplemental appendices must be paginated using the Bates Numbering feature of your PDF software and consist of an SA or S.A. prefix followed by the page number. A space between the prefix and the page number is optional. Note that using a space makes citations in the brief two words rather than one. Leading zeros in the page number are permitted but not required.</p> <p>Start the page numbering for any supplemental appendix at 1. Use continuous pagination through all supplemental appendix and sealed supplemental appendix volumes regardless of who files them. Do not include the volume number.</p> <p>Page numbers must have a font size of at least 14 points, must be placed in the bottom margin, and must be legible. Redact any existing page numbering that overlaps the Bates number. See <a href="#">Fourth Circuit Appendix Pagination &amp; Brief Citation Guide</a>.</p>
Sealed Supplemental Appendix Volumes	<p>Sealed record documents that are included in the supplemental appendix must be placed in a separate, sealed volume of the supplemental appendix and filed with a certificate of confidentiality.</p> <p>Pagination for sealed supplemental appendix volumes begins after the last page of the unsealed volumes and uses the same SA or S.A. prefix as unsealed volumes.</p> <p>Paper filing is required only if ordered by the court, but sealed supplemental appendix volumes must be served on counsel outside ECF since they are not accessible to counsel through ECF.</p> <p><a href="#">Form-Certificate of Confidentiality</a>  <a href="#">Memorandum on Sealed and Confidential Materials</a></p>

ECF FILING EVENTS	
Document	ECF event
Public Brief	BRIEF (formal, non-sealed briefs) Amicus Curiae/Intervenor Brief Amicus Brief on Petition for Rehearing
Sealed Version of Brief	SEALED BRIEF Certificate of confidentiality
Rule 30(c) Page-Proof Brief filed under Rule 30(c) schedule prior to final brief	Rule 30(c) page-proof opening brief Rule 30(c) page-proof opening/response brief Rule 30(c) page-proof response brief Rule 30(c) page-proof response/reply brief
Public Joint Appendix	JOINT APPENDIX
Sealed Volume of Joint Appendix	SEALED JOINT APPENDIX Certificate of confidentiality
Public Supplemental Appendix	SUPPLEMENTAL APPENDIX
Sealed Supplemental Appendix	SEALED SUPPLEMENTAL APPENDIX Certificate of confidentiality

## **INFORMAL BRIEFING**

### **Use of Informal Briefing Schedule**

Under Local Rule 34(b), the court uses an informal briefing schedule in cases involving pro se litigants to permit the court to consider the merits without requiring the pro se litigant to comply with formal briefing requirements. The court also uses an informal preliminary briefing schedule prior to the grant of a full or partial certificate of appealability in counseled, non-capital appeals from the denial of relief under 28 U.S.C. § 2254 or 2255.

### **Informal Brief Content and Format**

The clerk provides an informal brief form that asks appellant to identify the issues and facts supporting the appeal. Use of the form is not mandatory, and the parties may file a memorandum addressing the issues on appeal. The informal brief and any supporting memorandum may not exceed the length limitations established by Fed. R. App. P. 32(a)(7). It is not necessary to cite cases in an informal brief.

### **No Appendix**

No appendix or record excerpts are required. Instead, the court reviews the record from the district court.

### **Informal Briefing Deadlines**

- The informal opening brief is due 21 days after service of the informal briefing order. In section 2254 and 2255 cases in which no certificate of appealability has been granted, only the informal opening brief is filed. No additional briefing is ordered unless a certificate of appealability is granted.
- The informal response brief is due 14 days after service of the informal opening brief.
- The informal reply brief is due 10 days after service of the informal response brief.

### **Informal Preliminary Briefing Deadlines**

In appeals under 28 U.S.C. § 2254 or 2255 in which no certificate of appealability has been granted, the informal opening brief is due 21 days after service of the informal preliminary briefing order. No additional briefing is ordered unless a certificate of appealability is granted. If a certificate of appealability is granted, briefing proceeds as usual.



## **Failure to File Brief**

- If appellant fails to timely file an informal opening brief, the clerk's office will issue notice under Local Rule 45 that the appeal will be dismissed unless appellant remedies the default within 15 days.
- The filing of informal response and reply briefs is optional.

## **Appointment of Counsel for Formal Briefing and Oral Argument**

The court initially reviews cases that are informally briefed under its procedures set forth in Local Rule 34(a) pertaining to pre-argument review. If the panel reviewing an informal brief submitted by an indigent pro se litigant determines that further briefing and possible oral argument would be of assistance, counsel will be appointed and directed to file additional formal briefs. Loc. R. 34(b).

## **Related Links**

- [Pro Se Parties](#)
- [Rule 34, Oral Argument \(with Local Rules\)](#)
- [Rule 46, Attorneys \(with Local Rules\)](#)
- [Court Forms & Fees – Informal Briefs](#)

## **PRE-ARGUMENT REVIEW & CALENDARING**

### **Requesting Oral Argument**

Because any case may be decided without oral argument, all major arguments should be fully developed in the briefs. The parties may include in their briefs at the conclusion of the argument a statement setting forth the reasons why, in their opinion, oral argument should be heard. Loc. R. 34(a).

### **Pre-argument Review Panel**

Under Fed. R. App. P. 34(a)(2), oral argument is allowed in all cases unless a panel of three judges, after examination of the briefs and appendix, is of the opinion that oral argument is not needed. Oral argument will be allowed unless: (i) the appeal is frivolous; or (ii) the dispositive issue or set of issues has been recently authoritatively decided; or (iii) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Local Rule 34(a) sets out the court's pre-argument review procedure. Under Local Rule 34(a), cases are referred to randomly selected three-judge panels for review of the briefs and appendix in light of the oral argument criteria in Fed. R. App. P. 34(a)(2). If all of the judges of the panel conclude that oral argument is unnecessary, they may make any appropriate disposition, without oral argument, including but not limited to, affirmance or reversal. Loc. R. 34(a). A decision against oral argument must be unanimous, and if a case is decided without oral argument the decision on the merits generally will be unanimous also. IOP 34.2. Whenever at least one member of the review panel determines that oral argument would be of assistance, the panel notifies the clerk who places the case on the oral argument calendar. IOP 34.2.

### **Tentative Calendaring of Cases for Argument**

Counsel are notified about ten weeks in advance that their case has been tentatively assigned to a particular argument session. The notice advises counsel that any motions which affect the calendaring of the case (such as motions to continue or motions to submit on the briefs) must be filed within 10 days of the date of the notice. Loc. R. 34(c). During the 10-day tentative calendar period, counsel notifies the clerk's office regarding any dates they are unavailable for argument during the scheduled week and files any motions which may affect the calendaring of the case.

The clerk's office will attempt to accommodate any conflict of which it receives written notice during the tentative calendar period. Any motion filed by counsel during this tentative calendar period, as at any time, must reflect whether opposing counsel consents to or will oppose the motion. Loc. R. 27(a). If, during the tentative calendar period, counsel files an unopposed motion to submit the case on the briefs, the case will be removed from the tentative calendar and submitted to a randomly assigned panel. If counsel files a motion to submit on the briefs which is opposed by the other side, disposition of the motion will be deferred pending assignment to an argument panel.

The tentative calendar notification also directs counsel to file three additional paper copies of briefs and appendices, which are required for distribution to the argument panel.

### **Calendaring of Cases for Argument**

After removing cases affected by conflicts or pending motions, the clerk's office calendars the remaining cases from the tentative calendar list for oral argument or assigns them to standby status.

The clerk's office uses a computer program designed to achieve total random selection of three-judge panels, and merges those panels with the cases remaining on the tentative calendar list. IOP 34.1. The composition of each panel changes each day during court week except on those occasions where only one panel is sitting in a given geographical location. The varied assignment of judges to panels and the independent assignment of varied cases to panels is designed, insofar as practicable, to assure the opportunity for each judge to sit with all other judges an equal number of times, and to assure that both the appearance and the fact of presentation of particular types of cases to particular judges is avoided. IOP 34.1.

If a prior panel or judge has had previous involvement with the case by way of a pre-argument motion or a prior appeal, the clerk's office will make every effort to assign the case for oral argument to that judge or panel, but there is no guarantee that any of the judges who have previously been involved with an appeal will be assigned to a hearing panel. IOP 34.1.

The clerk's office sends counsel a "calendaring notice" approximately six weeks prior to the argument date, advising counsel of the date of oral argument and the time by which counsel must register for argument. The notice directs counsel to acknowledge within seven days who will appear and argue the case and state how much argument time will be used. In consolidated criminal cases, the court requires that counsel appear on behalf of each defendant separately represented, unless the defendant signs a waiver of counsel's appearance and co-defendant's counsel certifies in advance of argument that he or she is prepared to argue on behalf of the defendant whose attorney is not present. Counsel uses the entry oral argument acknowledgment to acknowledge that they are arguing or appearing for oral argument.

Once a case has been calendared for a date certain, it will be removed from the argument calendar only for good cause shown for the requested relief and that the relief could not have been requested within the tentative calendar period. Loc. R. 34(c). Continuance of an established oral argument date is not granted because of a prior professional commitment. Although the case will not be removed from the calendar because of a scheduling conflict by counsel after the notification of oral argument has been issued, the court may direct another lawyer from the same firm to argue the appeal if counsel of record cannot be present. Loc. R. 34(c) & 28(c) (court will interpret listing of an attorney on a brief as a representation that he or she is capable of arguing the appeal if lead counsel is unavailable).

## Related Links

- [Oral Argument](#)
- [Rule 34, Oral Argument \(with Local Rules\)](#)
- [Court Forms & Fees – Oral Argument](#)

## **ORAL ARGUMENT**

### **Richmond Sessions**

The court sits in Richmond, Virginia from Tuesday-Friday during six separate “court weeks” scheduled between September and June. The court hears and decides cases in panels consisting of three judges. Each panel hears oral argument in four cases each day during court week. Additional days and sessions are added to the schedule as needed.

### **Special Sessions**

Special sessions are scheduled at law schools and other locations within the Circuit. The court generally hears three cases at a law school, followed by a question and answer session. If argument is scheduled for a law school session but counsel prefers to present argument in Richmond, counsel should notify the clerk and request that the case be scheduled for the next available Richmond argument session.

### **Courthouse Security**

All visitors are required to show photo identification before they are directed through screening by Court Security Officers. Prohibited at all times are weapons and potential weapons, including firearms, pocket knives, scissors, letter openers, screw drivers, mace, and pepper spray. Umbrellas must be left at the entrance. Food and beverages may not be brought into the Courthouse or Annex. Storage lockers are not available. Additional time should be allowed to complete security screening.

### **Electronic Device Policy**

On the days the court is hearing argument, attorneys and their staff may bring electronic devices into the Courthouse or Annex (other than devices that serve only as cameras or recorders). All electronic devices must be turned off in any courtroom or chambers, but may be turned on with all sounds muted during oral argument of counsel's case to enable counsel to refer to documents previously downloaded to the device. Wireless Internet access is available for use of personal electronic devices in the library but not in the courtrooms. Electronic devices are prohibited on days the court is not hearing argument. More information may be found in the court's [Electronic Device Policy](#)

### **Pre-argument Registration**

Attorneys appearing for oral argument must register at least 30 minutes in advance in the library (Room 101) on the morning of argument to learn of panel assignment, courtroom assignment, order of appearance, and allocation of oral argument time. All counsel to a side must check in together to agree on the allocation of time. See the [Entry and Argument Protocol effective December 1, 2021](#) for entry requirements, staggered attorney check-in times and Covid-19 protocols.

## **Argument Panel**

The identity of the argument panel is kept confidential until the morning of oral argument.

The chief judge presides over en banc sessions of the court and over all three-judge panels on which the chief sits. The active circuit judge most senior in service on a panel is the presiding judge for all other oral argument panels. The presiding judge sits in the center of the panel; the next most senior judge sits to the right of the presiding judge; and the least senior judge on the panel sits to the left of the presiding judge.

An appeal may be heard and decided by two of the three judges assigned to a panel, when one judge becomes unavailable. If a panel is reduced to two and the two cannot agree, however, the case will be reargued before a new three-judge panel which may or may not include prior panel members. IOP 36.2.

## **Argument Time**

A digital clock is used to track argument time. The time appears green until only five minutes of argument time remain, at which point it changes to yellow. It changes to red when argument time has expired.

All parties to a side must share the time allotted for oral argument. The party filing the first notice of appeal or, in the event the parties noted an appeal on the same day, the plaintiff in the proceedings below will be deemed the appellant for purposes of both briefing and oral argument. Fed. R. App. P. 34(d); 28.1(b). Each side is normally allowed 20 minutes, except in en banc cases, in which counsel is allowed 30 minutes per side. In social security disability cases, black lung cases, and labor cases where the primary issue is whether the agency's decision is supported by substantial evidence, and in criminal cases where the primary issue involves the application of the sentencing guidelines, each side is limited to 15 minutes. Loc. R. 34(d).

Since the appellant is allowed to open and close the argument, counsel for appellant is asked to allocate their time between opening and rebuttal. Loc. R. 34(d). In a cross-appeal, both appellant and appellee may reserve rebuttal time. No more than 1/3 of the time may be reserved for rebuttal. In a 30-minute argument, counsel may reserve up to 10 minutes for rebuttal. In a 20-minute argument, counsel may reserve up to 7 minutes for rebuttal. In a 15-minute argument, counsel may reserve up to 5 minutes for rebuttal.

It is recommended that no more than two attorneys argue per side. Loc. R. 34(d). Care should be taken to avoid duplication of argument. Fed. R. App. P. 34(d).

Counsel may request additional time by written motion stating reasons, filed after notification that the case has been calendared for oral argument. Loc. R. 34(d). At argument, the panel may reduce or increase the amount of time allotted for oral argument. Loc. R. 34(d).

Briefs for cases assigned to an argument panel are distributed to the panel at the time the assignments are made, and the judges hearing argument will have read the briefs

and be familiar with the case. Therefore, in oral argument, counsel should emphasize the dispositive issues. Loc. R. 34(d). Counsel should not read at length from briefs, records, or authorities. Fed. R. App. P. 34(c).

### **Internet Availability of Argument Audio Files**

Audio links to the court's digitally recorded oral arguments are made available on the court's internet site, without charge, by the next business day. Counsel should not include in their arguments any sensitive personal information (juvenile names, dates of birth, social security numbers, financial account numbers, home addresses in criminal cases) or sealed criminal information (presentence reports, statement of reasons for judgment, juror names, victim statements, sealed plea agreements, or sealed motions for downward departure for substantial assistance).

### **Intervenors**

Intervenors are treated as parties for purposes of both briefing and argument, and share argument time with whichever side they support.

### **Amicus**

Amicus do not participate in argument except upon permission of the court. Fed. R. App. P. 29. If such a motion is granted, amicus is typically permitted to argue on time ceded by the party whose position they support.

### **Exhibits**

Prior motion and leave of court are required to use physical or electronic exhibits at argument. The motion must indicate whether opposing counsel has any objection.

Advance arrangements must be made with the clerk's office if counsel wishes to place any physical exhibits in the courtroom. Such arrangements are best made after receipt of notice of oral argument. Loc. R. 11(c). Counsel should make arrangements to have exhibits placed in the courtroom before court convenes on the date of argument. After argument, counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. Fed. R. App. P. 34(g).

### **Seating**

Only counsel and law students practicing under Local Rule 46(a) may sit at the attorney tables. Parties must use general seating outside the well of the courtroom. Counsel for the first case should be seated at counsel table when court convenes. The presiding judge will call upon appellant's counsel to approach the podium and begin argument.

### **Recess**

The court may choose to hear the day's cases without a break or may take a brief recess between cases.

## **Greeting**

Traditionally, Fourth Circuit judges come down from the bench following argument to shake hands with counsel and thank them for their advocacy.

## **Related Links**

- [Oral Argument](#)
- [Rule 34, Oral Argument \(with Local Rules\)](#)
- [Court Forms & Fees – Oral Argument](#)



## **OPINION AND JUDGMENT**

### **Opinion Assignments**

The hearing panel confers regarding the merits of the cases immediately following oral arguments. Although a tentative decision may be reached at this conference, additional conferences are sometimes necessary. IOP 36.1. After consultation with the presiding judge of each panel following court week, the chief judge assigns authors for the opinions with the objective of as even a distribution of the workload as can be achieved.

### **Unpublished Opinions**

The panel may decide the case by unpublished opinion pursuant to Local Rule 36(b). Unpublished opinions give counsel, the parties, and the lower court a statement of the reasons for the decision. They may not recite all of the facts or background of the case and may simply adopt the reasoning of the lower court. All opinions, published and unpublished, are available electronically on the court's web site - [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov). Counsel may move for publication of an unpublished opinion, citing reasons. If such motion is granted, the unpublished opinion will be published without change in result. Loc. R. 36(b).

### **Citation of Unpublished Opinions**

Fed. R. App. P. 32.1 permits unrestricted citation of unpublished federal judicial opinions, orders, judgments, or other written dispositions issued on or after January 1, 2007. Citation of this court's unpublished dispositions issued prior to January 1, 2007, in briefs and oral argument in this court and in the district courts within this circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or law of the case. Loc. R. 32.1. If counsel believes, nevertheless, that an unpublished disposition of this court issued prior to January 1, 2007, has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well, such disposition may be cited.

### **Published Opinions**

An opinion is not published unless it meets one or more of the standards set out for publication in Local Rule 36(a).

- It establishes, alters, modifies, clarifies, or explains a rule of law within this circuit; or
- It involves a legal issue of continuing public interest; or
- It criticizes existing law; or
- It contains an historical review of a legal rule that is not duplicative; or
- It resolves a conflict between panels of this court or creates a conflict with a decision in another circuit.

The court will publish opinions only in cases that have been formally briefed and argued. Opinions in such cases will be published if the author or a majority of the

joining judges believe the opinion satisfies one or more of the standards of publication, and all members of the court have acknowledged in writing their receipt of the proposed opinion. A judge may file a published opinion without obtaining all acknowledgments only if the opinion has been in circulation with all members of the court for 10 days. Loc. R. 36(a). When the author of a dissenting opinion designates it for publication, the majority opinion will also be published.

### **Circulation of Opinions**

When a proposed opinion in an argued case is prepared and submitted to other panel members, copies are provided to the non-sitting judges, including the senior judges, and their comments are solicited. The opinion is then finalized. The clerk's office never receives advance notice of when a decision will be rendered. IOP 36.2.

### **Issuance of Opinions**

Opinions are sent to counsel on the day judgment is entered. All issued opinions and selected orders are posted on the court's internet site beginning at 2:30 p.m. on the day of issuance. The public may subscribe to the daily opinions list through an email notice or RSS feed. Opinions designated for immediate release are posted as soon as they have been filed in the clerk's office and served on the parties and the district court.

### **Notice of Judgment**

Pursuant to Fed. R. App. P. 36(a), the clerk prepares, signs, and enters judgment on the day the opinion is filed unless the opinion directs settlement of the form of the judgment, in which event the clerk prepares, signs, and enters the judgment following final settlement by the court (see Fed. R. App. P. 19). If a judgment is rendered without an opinion, the clerk prepares, signs, and enters the judgment following instruction from the court. On the date judgment is entered, the clerk sends to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of judgment. Fed. R. App. P. 36(b).

This court's notice of judgment advises the parties of the time limits applicable to petitions for rehearing and petitions for certiorari, and the procedures for fixing costs and issuing the mandate.

### **Related Links**

- [Opinions](#)
- [Rule 32.1, Citing Judicial Disposition \(with Local Rule\)](#)
- [Rule 36, Entry of Judgment; Notice \(with Local Rules\)](#)

## **REHEARING & REHEARING EN BANC**

### **Grounds for Rehearing**

Although petitions for rehearing are filed in a great many cases, few are granted. Filing a petition solely for purposes of delay or in order merely to reargue the case is an abuse of the privilege. A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist:

1. a material factual or legal matter was overlooked in the decision;
2. a change in the law occurred after the case was submitted and was overlooked by the panel;
3. the opinion is in conflict with a decision of the U.S. Supreme Court, this court, or another court of appeals and the conflict is not addressed in the opinion; or
4. the proceeding involves one or more questions of exceptional importance.

The petition must state with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Fed. R. App. P. 40; Loc. R. 40(a) & (b).

### **Grounds for Hearing or Rehearing En Banc**

Hearings and rehearings en banc are not favored and ordinarily will not be ordered unless: en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or the proceeding involves a question of exceptional importance. Fed. R. App. P. 35(a).

### **Length & Format of Petition**

Format must comply with Fed. R. App. P. 32. No cover is required, but the title page must state plainly whether it is a petition for rehearing or petition for rehearing and rehearing en banc. A petition for rehearing en banc must be made at the same time and in the same document as a petition for rehearing. Except by permission of the court, a petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3,900 words (15 pages if typewritten or handwritten) and must be accompanied by a certificate of compliance with type-volume limit if produced by computer. Fed. R. App. P. 40(b); 35(b)(2) & (3).

### **Filing Period**

A petition for rehearing and/or rehearing en banc must be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order. However, in all civil cases in which the United States or an agency or officer thereof is a party, the time within which any party may seek rehearing is 45 days after entry of judgment unless the time is shortened or enlarged by order. Fed. R. App. P. 40(a)(1). A petition that an appeal be heard initially en banc must be filed by the date the appellee's brief is due. Fed. R. App. P. 35(c).

The court strictly enforces the time limits for filing petitions for rehearing and petitions for rehearing en banc. The clerk's office will deny a late petition as untimely unless one of the following grounds is presented for extension: (i) the death or serious illness of counsel, or of a member of counsel's immediate family (or in the case of a party proceeding without counsel, the death or serious illness of the party or a member of the party's immediate family); or (ii) an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel. Loc. R. 40(c).

Petitions for rehearing and petitions for en banc rehearing from incarcerated persons proceeding without the assistance of counsel are deemed filed when they are delivered to prison or jail officials. All other such petitions are deemed filed only when received in the clerk's office. Loc. R. 40(c).

### **Submission to the Court**

The clerk's office will hold any petition for rehearing or petition for rehearing en banc until the time for filing all such petitions, or any extension thereof granted in the particular case, has run. Thereafter, all petitions for rehearing in the same case will be distributed to the court simultaneously. IOP 40.1. A petition for rehearing is submitted to the panel that decided the case. A petition for rehearing en banc is distributed to all active judges of the court, to senior judges of the court who request distribution, and to any senior or visiting judge who may have heard and decided the appeal. Loc. R. 35(a).

### **Response**

No response to a petition for rehearing will be received unless requested by the court, but a petition for rehearing ordinarily will not be granted without a request for a response. Fed. R. App. P. 40(a)(3). Similarly, no response to a petition for rehearing en banc may be filed unless ordered by the court. Fed. R. App. P. 35(e). A response to a petition for rehearing, with or without rehearing en banc, may not exceed 3,900 words (15 pages if typewritten or handwritten) and must be accompanied by a certificate of compliance with type-volume limit if produced by computer. Fed. R. App. P. 40(a)(3) & (b).

### **Filing of Amicus Briefs During Consideration of Whether to Grant Rehearing**

Amicus filings during the court's consideration of whether to grant panel or en banc rehearing are governed by Fed. R. App. P. 29(b).

The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.

The content requirements for a brief at the petition for rehearing stage are the same as those at the merits stage of the case. An amicus brief at the petition for rehearing stage may not exceed 2,600 words. The filing of a paper copy of the amicus brief is not required at the petition for rehearing stage. Loc. R. 29.

An amicus curiae supporting a petition for rehearing or rehearing en banc or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

## **Panel Rehearing**

The panel of judges who heard and decided the appeal will rule on the petition for rehearing. Such panel may include a senior circuit judge or a visiting judge sitting in the Fourth Circuit by designation. IOP 40.2. If a petition for rehearing is granted, the original judgment and opinion of the court are vacated and the case will be reheard before the original panel. IOP 40.2. The panel may make a final disposition of the case without reargument, restore the case to the calendar for reargument or resubmission, or issue any other appropriate order. Fed. R. App. P. 40(a)(4). The court may direct the filing of additional briefs, or the parties may seek leave of court to file additional briefs. IOP 40.2.

## **Decision to Hear or Rehear a Case En Banc**

A majority of the circuit judges who are in regular active service and not disqualified in a case may grant a hearing or rehearing en banc. 28 U.S.C. § 46(c); Fed. R. App. P. 35(a); Loc. R. 35(b). A senior or visiting judge does not vote on a petition for rehearing en banc, even if the senior or visiting judge sat on the panel that decided the case. A judge who joins the court after a petition for rehearing en banc has been submitted to the court, and before an order has been entered, will be eligible to vote on the decision to hear or rehear a case en banc. Loc. R. 35(b).

## **Poll**

Unless a judge requests that a poll be taken on the petition for rehearing en banc none will be taken. Fed. R. App. P. 35(f). A poll on whether to rehear a case en banc may be requested, with or without a petition, by an active judge of the court or by a senior or visiting judge who sat on the panel that decided the case originally. If no poll is requested, the panel's order on a petition for rehearing will bear the notation that no member of the court requested a poll. Loc. R. 35(b). If a poll is requested and hearing or rehearing en banc is denied, the order will reflect the vote of each participating judge. Loc. R. 35(b). If the court votes to grant a hearing or rehearing en banc, the order will simply recite that a majority of the judges in regular active service voted to grant hearing or rehearing en banc, but will not reflect the vote of each judge.

## **Additional Briefing for En Banc Hearing or Rehearing**

If the Court grants hearing or rehearing en banc, and if a majority of the Court agrees additional briefing is desirable, the Court, on motion by a party or on its own initiative, may order full en banc briefing or supplemental en banc briefing addressing issues specified by the Court. If additional briefing is required, the Court's en banc briefing schedule will indicate whether full briefs or supplemental briefs must be filed and, where appropriate, the issue(s) to be addressed. As appropriate, full or supplemental en banc

briefs should address (i) the necessity of securing or maintaining uniformity of the Court's decisions; (ii) whether the Court should revise existing circuit precedent; (iii) intervening precedent; and (iv) any other issue(s) identified by the Court in the briefing order. Loc. R. 35(d). The order granting rehearing en banc will also typically schedule the case before the en banc court.

### **Reproduction Costs for Briefs and Appendices Required for En Banc Review**

Each party will bear the initial cost of additional copies of its own briefs required by the Court for en banc review. The party that requested the hearing or rehearing en banc will bear the initial cost of filing additional copies of the appendix or supplemental appendix required for en banc review. Loc. R. 35(e). In the event that cross petitions for hearing or rehearing en banc are granted, the parties will share equally the initial cost of preparing additional copies of the appendix or supplemental appendix required for en banc review. Loc. R. 35(e).

### **Panel Judgment Vacated**

Granting of rehearing or rehearing en banc vacates the previous panel judgment and opinion; the rehearing is a review of the judgment or decision from which review is sought and not a review of the judgment of the panel. Loc. R. 35(c); IOP 40.2.

### **Decision of Cases Heard or Reheard En Banc**

An en banc hearing will be before all eligible, active and participating judges of the court. Loc. R. 35(c). An en banc rehearing will be before all eligible and participating active judges, and any senior judge of the court who sat on the panel that decided the case originally. Loc. R. 35(c). An active judge who takes senior status after a case is heard or reheard by an en banc court will be eligible to participate in the en banc decision. A judge who joins the court after argument of a case to an en banc court will not be eligible to participate in the decision of the case. A judge who joins the court after submission of a case to an en banc court without oral argument will participate in the decision of the case. Loc. R. 35(c).

### **Effect of Petition on Time to Petition for Certiorari**

If a petition for rehearing or petition for rehearing en banc is timely filed, the time to petition for certiorari runs from the date of the denial of the petition for rehearing or petition for rehearing en banc. S. Ct. R. 13.3.

### **Papers Following Denial of Rehearing or Expiration of Rehearing Period**

Except for timely petitions for rehearing en banc, cost and attorney fee matters, and other matters ancillary to the filing of an application for writ of certiorari with the Supreme Court (such as a motion to stay issuance of the mandate), the clerk's office will not accept motions or other papers requesting further relief in a case after the court has denied a petition for rehearing or the time for filing a petition for rehearing has expired. Loc. R. 40(d).

## Related Links

- [Rule 35, En Banc Determination \(with Local Rules\)](#)
- [Rule 40, Petition for Panel Rehearing \(with Local Rules\)](#)
- [Rule 29, Brief of an Amicus Curiae \(with Local Rules\)](#)

## **COSTS AND ATTORNEY'S FEES**

### **To Whom Allowed**

Unless otherwise provided by law, agreed by the parties, or ordered by the court, if an appeal is dismissed or the judgment affirmed, costs are taxed against the appellant; and if the judgment is reversed costs are taxed against the appellee. If a judgment is affirmed or reversed in part, or is vacated, costs are allowed only as ordered by the court. Fed. R. App. P. 39(a).

Costs for or against the United States, its agency, or officer will be assessed only if authorized by law. Fed. R. App. P. 39(b). Those instances in which costs are authorized for or against the United States are controlled by statute, especially 28 U.S.C. § 2412 and 5 U.S.C. § 504.

### **Costs Taxable in the Court of Appeals**

The only costs generally taxable in the court of appeals are: (i) the \$500 docketing fee if the appellant is the prevailing party; and (ii) the cost of printing or reproducing the briefs and appendices, including exhibits. Fed. R. App. P. 39(c); Local Rule 39(c). The cost of producing necessary copies of briefs and appendices is taxable on appeal at a rate equal to actual cost, but not higher than \$.15 per page.

### **Costs Taxable in the District Court**

Various costs incidental to an appeal must be settled at the district court level. These include: (i) the cost of the reporter's transcript; (ii) the \$5 fee for filing the notice of appeal; (iii) the fee for preparing and transmitting the record; and (iv) the premiums paid for any required appeal bond. Fed. R. App. P. 39(e); Local Rule 39(c).

Application for recovery of these expenses by the successful party must be made in the district court, and should be made only after issuance of the mandate. These costs, if erroneously applied for in the court of appeals, will be disallowed without prejudice to the right to reapply for them in the district court. Local Rule 39(c).

### **Bill of Costs**

The prevailing party seeks costs allowable on appeal by filing in the court of appeals, within 14 days after entry of judgment, the bill of costs form provided with the notice of judgment. Fed. R. App. P. 39(d). The bill of costs shall be itemized and verified and, if based on a printer's bill, should be accompanied by the printer's itemized statement of charges. Local Rule 39(b). When costs are sought for or against the United States, counsel should cite the statutory authority relied upon. Local Rule 39(b). A late affidavit for costs must be accompanied by a motion for leave to file.



## **Objections to Bill of Costs**

Objections to the bill of costs must be filed within 14 days of service on the party against whom costs are to be taxed unless the time is extended by the court. Fed. R. App. P. 39(d).

## **Award of Costs**

The clerk rules on all bills of costs and objections in the first instance. Local Rule 39(b). A party desiring reconsideration of the clerk's determination must file a motion for reconsideration within 14 days of entry of the clerk's order. Local Rule 27(b). Taxation of costs will not be delayed by the filing of a petition for rehearing or other post-judgment motion. Local Rule 39(b).

The clerk prepares and certifies an itemized statement of costs taxed in the court of appeals for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs. Fed. R. App. P. 39(d). If the mandate has been issued before final determination of costs, the clerk will send a supplemental bill of costs to the district court for inclusion in the mandate at a later date. Local Rule 39(c).

## **Recovery of Costs**

All costs, those taxed by the court of appeals as well as those taxed by the district court, are recoverable in the district court, through an action to enforce an award of costs.

## **Attorney's Fees**

Under the "American Rule," attorney's fees for appellate work are generally not recoverable absent express contractual or statutory authorization. E.g., 28 U.S.C. § 1912; 28 U.S.C. § 1927; 42 U.S.C. § 1988; Fed. R. App. P. 38.

Under Local Rule 46(e), any application for an award of attorney's fees and expenses must include a reference to the statutory basis for the request and a detailed itemization of the amounts requested. In certain agency cases, this requirement may be met by submitting the standard government form for fees and expenses provided by the agency for approval by the court. Local Rule 46(e).

## **Related Links**

- [Rule 39, Costs \(with Local Rules\)](#)
- [Rule 46, Attorneys \(with Local Rules\)](#)
- [Court Forms & Fees - Costs](#)

# MANDATE

## Nature and Effect

The court of appeals issues a formal mandate on the date its decision takes effect. Fed. R. App. P. 41(a). Upon issuance of the mandate, the jurisdiction of the court of appeals over the case terminates, and the district court acquires jurisdiction to implement the mandate. The trial court record will be returned to the clerk of that court once the mandate has issued.

## Time of Issuance

The mandate must issue 7 days after expiration of the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time. Fed. R. App. P. 41(b).

## Staying the Mandate

The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate stays the mandate until disposition of the petition or motion, unless the court orders otherwise. Fed. R. App. P. 41(b).

A party may move to stay the mandate pending the filing of a petition for writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay. Fed. R. App. P. 41(d)(1).

If the court of appeals denies a stay of the mandate, the party may seek a stay from Chief Justice Roberts, who is the Supreme Court Justice with responsibility for the Fourth Circuit. S. Ct. R. 23.

If the court of appeals grants a stay of the mandate, the stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition. Fed. R. App. P. 41(d)(2). The court may require a bond or other security as a condition to staying the mandate. Fed. R. App. P. 41(d)(3). The court of appeals will issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed. Fed. R. App. P. 41(d)(4).

## Related Links

- [Rule 41, Mandate: Contents; Issuance and Effective Date; Stay \(with Local Rules\)](#)